(X) 15-225365

EXTRACTS FROM RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

No. 913.

THE STATE OF MICHIGAN EX REL. THE ATTORNEY GENERAL, PLAINTIFF IN ERROR,

vs.

THE FLINT AND PERE MARQUETTE RAILROAD COMPANY, WILLIAM W. CRAPO, TRUSTEE, AND ALFRED W. NEWTON.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

RECORD FILED APRIL 8, 1893.

(15,289.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 7, 1893.

SUPREME COURT OF THE UNITED STATES.

Bill of Complaint.

State of Michigan:

Circuit Court for the County of Ingham. In Chancery.

To the circuit court for the county of Ingham, in chancery:

Moses Taggart, attorney general for the State of Michigan, for and in behalf of said State, now comes into court and shows and alleges as follows:

(1.) That on the 28th day of September, A. D. 1850, the Congress of the United States of America granted unto the several States named in the act passed at said date, including the State of Michigan, the whole of the swamp and overflowed lands made unfit for cultivation and remaining unsold on or after the 28th day of September, A. D. 1850, for the purpose of constructing the necessary levees and drains to reclaim the swamp and overflowed lands therein.

And your informant further shows that under and by the terms of said act it became and was the duty of the Secretary of the Interior to make lists and plats of such lands and transmit the same to the governors of the said several States, including the State of Michigan, in which said lands lay, and, at the request of said several governors, to issue patents to the said States of said lands.

That after making up the lists and plats aforesaid, all legal subdivisions, the greater part whereof was wet and unfit for cultivation, were to be included in said lists and plats, as of the character of the lands granted.

And your informant shows and alleges the fact to be that the effect of the grant aforesaid was to vest in the State of Michigan title to all of the swamp and overflowed land located therein and of the kind and character designated in said act; that the right and title of the State of Michigan to said lands by virtue of said grant was from that day thenceforth asserted by the State of Michigan and recognized by the General Government of the United States and the Land Department of the United States, at Washington.

(2.) And your informant further shows to this honorable court that the method of listing, designating, and describing said lands after the passage of said act of September 28th, 1850, became and was a matter of correspondence between the surveyor general of the United States for the State of Michigan, Land Commissioner of the United States, and the governor of the State of Michigan.

That on or about the 21st day of November, 1850, certain instructions were prepared relative to the designation and description of said swamp lands by Hon. J. Butterfield, Commissioner of the Land

Department of the United States, a copy of which was forwarded to Charles Noble, Esq., surveyor general of the United States for the State of Michigan, and another copy transmitted to the governor of the State of Michigan.

That the said instructions recited, in substance, the original copy of the grant in the act of 1850, granting the swamp lands as aforesaid, and contained the following language: "This act clearly and unequivocally grants to the several States these lands which, from being swampy or subject to overflow, are unfit for cultivation; in this class *is* also included all lands which, though dry a part of the year, are subject to inundation at the planting, growing, or harvesting seasons, so as to destroy the crops, and therefore are unfit for cultivation, taking the average for a reasonable number of years as a rule of determination. You will please make out a list of the lands thus granted to the State, designating those which have been sold or otherwise disposed of since the passage of the law, and the price paid for them when purchased.

"The only reliable data in your possession from which these lists can be made out are the field-notes on file in your office, and if the authorities of the State are willing to adopt these as a basis of these lists, you will so regard them; if not, and those authorities furnish you with satisfactory evidence that any lands are of the character embraced by the grant, you will so report them."

Upon the same day the Land Commissioner of the United States wrote to the governor of the State of Michigan enclosing a copy of the instructions, to which he refers as follows:

"You will perceive that by these instructions the surveyor general is authorized to receive reliable evidence as to the character of the lands as may be presented by the authorities of the State, and as many of the lands were probably surveyed at the dry season, and hence are not represented by the descriptive notes or plats as being of that character, I have supposed that it might be a matter of sufficient importance to induce you to call upon the county surveyors or other respectable persons of your State for a statement, made under oath, of the swamp and overflowed lands in their respective counties. Such testimony, you will perceive, will be regarded as establishing the facts in the case, and on receipt of the reports of the surveyor general, lists of the land will be prepared as required by the act, and submitted for approval to the Secretary of the Interior, and plats and patents for the lands thus approved will at once be prepared and forwarded to you."

That on or about the 6th day of December, 1850, Charles Noble, the surveyor general of the United States for the State of Michigan, wrote to Hon. John S. Barry, governor of the State of Michigan, as follows: "I have the honor herewith to enclose to you a copy of the instructions to me to designate the swamp lands granted to the State of Michigan by the act of Congress approved September 28th, 1850, entitled 'An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits.' To enable me to carry out the views of the Government in making this grant I have to request of you information—

"1. Whether the State authorities are willing to adopt the field-notes of the surveyor on file in this office as a basis of the lists of all lands thus granted to the State, or

"2. Whether the State authorities conclude to have a survey made to determine the boundaries of the swamp and overflowed lands."

And, further, your informant shows that on or about the 20th day of December, 1850, Governor Barry wrote to Charles Noble, surveyor general, as follows: "I am inclined to believe that a further survey would give the State a far greater amount of swamp lands as are designated as such in the records of your office, but, having no authority, I hardly feel at liberty to incur the expense that would attend a survey. If all action could be delayed until the meeting of the legislature, to which the matter could be submitted, I can hardly doubt that provisions would be made for securing to the State all the benefits to be derived from the act of Congress in question."

That on or about the 3d day of January, 1851, the said United States surveyor general for Michigan wrote to Governor Barry as follows: "I have received your letter of the 20th ult. I am persuaded from the examination of the notes returned to this office that the amount of swamp lands designated as such in the notes, taking all of the unsold lands together, must be greater than that would now be found from an actual resurvey of the whole, and I think there can be no doubt whatever that the net proceeds to the State would be much greater.

"The expense to the State of a resurvey of the whole peninsula (upper and lower), for I do not see how it could be properly ascertained short of a full survey of the whole, would be very large and probably equal in amount the value of the lands designated by the act of Congress in question.

"The delay, too, necessarily attending a resurvey would be very great, and if no great advantages are to result therefrom, the benefits to be derived from the act must be materially lessened. From the examination already made from the notes of the surveyor, returned to the surveyor general's office, I do not hesitate to say that in my judgment the true interest of the State will be much promoted by making the designation of the swamp lands from the notes.

"I beg pardon for thus obtruding my opinion upon your consideration, but I know you will appreciate my views and motives in so doing. I may add, perhaps, with great propriety that the views of the late surveyor general on this subject are the same as my own, as I have leared from conversation with him upon the subject."

As a part of the same letter, and in view of replying to the letter received from Governor Barry, Mr. Noble adds:

"I cannot find in the law of Congress, or in the instructions to me from the General Land Office, any authority for designating a portion of the swamp lands from the notes of the surveyor returned to this office, and a portion by a resurvey.

"My construction of the instructions was that the whole must be

designated in one way or the other. These lands are to be designated, all of them, from the notes of the surveyors in this office, unless the State authorities choose to survey.

"It will take some weeks to go through the examination of the notes and maps, and my report will probably not be made before the middle of February, and probably not until the first of March."

Which said instructions and letters are on file in the proper office in the city of Lansing, and ready to be produced and proven as this court may direct.

(3.) And your informant further shows, as he is advised and believes and so he charges the fact to be, that the survey of the public lands belonging to the General Government, to which reference is made in said instructions and letters above set forth, had indicated the part or portion or the sections or subdivisions of sections of Government lands which were of a swampy character and come within the lands conveyed by said grant of September 28th, A. D. 1850.

That in pursuance of the propositions of the Commissioner of the Land Department of the United States, at Washington, and the suggestions made by the surveyor general of the United States for the State of Michigan the legislature for the State of Michigan for the year 1851, by the terms thereof, at the suggestions of the governor of the State of Michigan, took into consideration the said propositions and the best methods for securing to the State of Michigan the greatest benefit from said grant.

And your informant further shows the fact to be that the legislature of the State of Michigan, by act approved by the governor the 28th day of June, 1851, adopted the notes of the surveyor on file in the surveyor general's office as a basis upon which the State should receive the lands in question and which was the basis upon which said lands were accepted by said State of Michigan, which said legislation was known to the Land Department, at Washington, and understood to be the basis agreed upon for the adjustment of the lands granted by said grant.

And your informant shows that the grant in question and the propositions made by the Land Commissioner of the United States and the aforesaid action of the legislature of the State of Michigan, accepting the surveyor general's minutes of the survey on file in his office as a basis of adjustment between the State and the United States, operated and had the legal effect to perfect in the State of Michigan full, complete, and absolute title to all the lands shown by the surveyor general's minutes to be swamp and overflowed lands and all subdivisions of land the greater part of which appeared by said minutes to be of a swampy nature.

And your informant alleges and shows the fact to be, as he is advised and believes, and as appears from the records and files in the office of the land commissioner of the State of Michigan, that, in pursuance of said propositions and action of the legislature of the State Michigan accepting and adopting it as a basis of adjustment, the surveyor general of the United States for the State of Michigan proceeded to prepare plats of the public lands of the United States, and

designated upon said plats, by well-defined lines, that part of the land and the several subdivisions thereof that were of a swampy nature and character and came within the class of lands granted to the State of Michigan by act of Congress of September 28th, 1850.

And your informant shows that those marks used by the surveyor general to designate the several pieces and parcels of land deemed to be of a swampy nature and to come within the original grant of the United States Congress are made in ink, and that within such lines *are* written the letter "S," to indicate that such lands are swamp lands; and so your informant charges that, in pursuance of the direction of the Land Department, at Washington, the surveyor general of the United States, acting both upon such instructions and the propositions of the land commissioner, and, as aforesaid, from the minutes of the general survey of the public lands, did make these maps and lists thereon upon plats which are on file in the office of the land commissioner of the State of Michigan, and which were and are the identification of the swamp lands granted to the State of Michigan by said act, and which this informant submits are effective and binding both upon the United States and all persons claiming from them, as well as the State of Michigan; and this informant charges the fact to be that from the time of the legislation above referred to, of June 28th, 1851, down to the present time, the State of Michigan, by its authorized officers, and particularly by the governor of said State and the commissioner of the State land office, have always treated and regarded the surveyor general's minutes and plats and maps of the swamp lands placed thereon by the said surveyor general as binding upon the State of Michigan and as fixing and determining the lands belonging to the State of Michigan under the said act of Congress of 1850, and that the General Government at Washington, and particularly the Interior Department and Land Department of the United States, have at all times been fully advised as to the act of the legislature of the State of Michigan in 1851 and of the claims made by said State by reason thereof.

And said informant alleges that said act of the Michigan State legislature of June 28th, 1851, and the selection by the State of swamp lands thereby under said congressional grant of 1850, as well as the lists of swamp lands prepared by the United States surveyor general for Michigan, were respectively, as soon as said act was passed and said lists made, reported to the United States General Land Office, at Washington.

That the said proposal by the United States Land Commissioner of method of identification of said lands and the said action taken thereon *was* with the approval of the Secretary of the Interior of the United States, and the said selection made of such swamp lands and the lands involved in this suit *were* approved by the said Secretary of the Interior.

That both by reason of said action taken to identify and select said lands and of the several acts of Congress subsequent to the grant of 1850 confirmatory thereof and of the State's title in lands selected as aforesaid the title of the State was and is and has been

at all times full and complete since the said grant of September 28th, 1850.

And your informant further shows that the position or claim of the State of Michigan as to its right and title to the lands shown to be swamp lands by the minutes of the survey of the surveyor general and by the said surveyor general's report and maps and plats prepared by him and filed in the land commissioner's office in the State of Michigan have never been repudiated by the Department of the Interior, at Washington, but after such action the preparation of lists and the obtaining of said lands simply for the purpose of evidencing the title of the State thereto has been neglected by the Government officials at Washington; that some of said lands have been patented to the State and as to other- lists have been prepared and certified to the State and as to others lists have been prepared and not certified, and as to still other descriptions no lists whatever have been prepared, although the Department of the Interior, at Washington, and particularly the Land Department have from time to time been, by the proper officials, requested to certify and patent said swamp lands to the State of Michigan.

And your informant further charges the fact to be that Exhibit "A," which is attached to this bill of complaint as a part thereof and which he asks to be considered and made a part thereof, contains a list of part of the swamp and overflowed lands which were granted to the State of Michigan by the act of September 28th, 1850, and which are shown to be swamp and overflowed lands, as this informant alleges, by the surveyor general's minutes and the plats and maps prepared by him and filed in the office of the land commissioner for the State of Michigan, and the title to which is now in the State of Michigan by virtue of said grant and acceptance as aforesaid, and which said lands your informant alleges are swamp and overflowed lands within the true intent and meaning of said grant of the United States Congress of September 28th, 1850.

And your informant further shows that in the preparation of the lists contained in Exhibit "A" the letter "S" is used as the abbreviation for "south," "E" for "east," "N" for north," and "W" for "west," the letter "T" for "town." and "R" for "range," the abbreviations used being those in common use in Government descriptions of sections and portions of Government sections of land.

(4.) And your informant alleges that on or about the 3d day of June, A. D. 1856, the Congress of the United States, by an act entitled "An act making a grant of alternate sections of lands to the State of Michigan to aid in the construction of certain railroads in said State, and for other purposes," granted to the State of Michigan certain lands for the benefit of certain railroads named and described in said act; and, further, your informant shows that the legislature of the State of Michigan, by an act approved February 14th, 1857, conferred upon the Flint & Pere Marquette Railway Company, a corporation organized under and by virtue of the laws of the State of the Michigan and a corporation carrying on railroad business in the State of Michigan, the lands, franchises, powers, and privileges that were conferred by act of Congress to aid in the

nstruction of a railroad from Pere Marquette to Flint and from ence to Port Huron, and this informant alleges that thereafter e Flint & Pere Marquette Railway Company went into the hands a receiver, and was subsequenely reorganized under the name of e Flint & Pere Marquette Railroad Company, which company ok all the lands, rights, and interest therein held by the Flint & ere Marquette Railway Company and still holds and claims to vn the said lands.

And your informant shows the fact to be that the lands granted r Congress for railroad purposes as aforesaid were and consisted alternate sections, designated by odd numbers, six sections in idth on each side of each of the roads, and the act provided that n case it should appear that the United States, when the lines and outes of said roads are definitely fixed, had sold any section or any art thereof granted as aforesaid, or that the right of pre-emption as attached to the same, then it shall be lawful for any agent or gents, to be appointed by the governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands f the United States nearest to the tiers of the sections above specied, so much land in alternate sections or parts of sections as shall e equal to such lands as the United States shall have sold or otherwise appropriated.

And this informant further shows, as he is advised and believes, hat the Flint & Pere Marquette Railroad Company appointed an gent to select lands under said act of Congress, as well as that of he legislature of the State of Michigan above referred to, and induced the Commissioner of the General Land Office to certify the same to the said Flint & Pere Marquette Railroad Company, including the land set forth and described in Exhibit "A," hereto attached, which lists are filed in the office of the State land commissioner at Lansing, and contains the following proviso: "Subject to all its conditions (that is, the conditions of said grant) or to any valid interfering rights which may exist or any of the terms imposed in the foregoing lists," referring to the lists of land certified to the Flint & Pere Marquette Railroad Company.

And this informant shows to this honorable court that the lands set forth and described in said Exhibit "A" have been certified, as he is advised and believes, to the Flint & Pere Marquette Railroad Company, and that he is advised, but is unable to state to what extent or what part of, said lands have been patented by the General Government of the United States to the Flint & Pere Marquette Railroad Company.

(5.) And this informant shows that the Flint & Pere Marquette Railroad Company is a corporation organized under and by virtue of the laws of the State of Michigan and is operated as such in the State of Michigan, and, as he is advised and believes, the said Flint & Pere Marquette Railroad Company conveyed all of its interest in said lands to one Oliver Prescott, William Prescott, of New Bedford, Massachusetts, as trustees, to have, hold, and dispose of said lands described in Exhibit "A," hereto annexed, for the purpose of creating a sinking fund for the payment of its bonded indebtedness.

And, further, your informant shows that the names of the bondholders, for the payment of whose bonds said trust was created, are unknown to him, but that they are numerous and scattered, and, as he verily believes, it is impracticable to make them defendants herein.

And your informant shows and states that he is unable to give the amount of the bonded indebtedness of the said Flint & Pere Marquette Railroad Company, but, as he is advised and believes, it is greatly in excess of the value of the lands described in said Exhibit "A."

And, further, your informant shows, as he is advised and believes, that one A. W. Newton, of East Saginaw, Michigan, is the land commissioner of the Flint & Pere Marquette Railroad Company, with authority from said trustees to dispose of the lands of said company held by them in trust as aforesaid, including those described in Exhibit "A," and that he is offering the same now for sale and is liable to dispose of a part or portion of the lands described in said Exhibit "A" at any time.

And your informant, as he is advised and believes, shows that the lands described in said Exhibit "A" are worth the sum of $50,000 and upwards, and *has* timber growing upon the same which is worth many thousands of dollars.

And your informant shows, on information and belief, that under and by said supposed authority and asserted authority and ownership of the Flint & Pere Marquette Railroad Company, by virtue of the said railroad grant made as aforesaid, timber has been cut upon said lands described in Exhibit "A," and is at any time liable to be cut thereon by virtue of said asserted authority, and the State thereby receiving irreparable injury to its title thereto.

And your informant charges that said lands are unoccupied lands, and that *it has* not been conferred upon the Flint & Pere Marquette Railroad Company, either for right of way for said company's road or for depot buildings or grounds, but still *is* the property of the State of Michigan, vested in it by the grant of 1850 and the acceptance of the same by the legislature of the State of Michigan as aforesaid.

That the timber being cut and sold as aforesaid is valuable, and the remaining timber upon said lands is of great value.

And, further, your informant shows to this court that the only claim held and possessed by the said Flint & Pere Marquette Railroad Company and said trustees and land commissioner of said company consists of the grant of Congress of the United States and the action of the legislature of the State of Michigan, as above set forth, and the certification of such lands by the officers of the Interior Department of the United States, and that inasmuch as the grant of said lands described as aforesaid in Exhibit "A" and the identification of the same were made prior to the grant to the State of Michigan for the construction of a railroad from Pere Marquette to Flint, Michigan, and thence to Port Huron, Michigan, and the title of the State of Michigan was full and complete prior to the conferring or any attempt to confer the said lands upon the said Flint & Perre

Marquette Railway Company or its successor, *and* its several trustees took and hold neither a legal or equitable claim to said lands or any part thereof, and the full extent of the claim which said company and its trustees make or have ever made to these lands described in Exhibit "A" is not based upon any legal or equitable title, but upon certain acts of the officials of the General Government, which constitute a cloud upon the title of the State of Michigan to said lands, and therefore he alleges that neither the Flint & Pere Marquette Railroad Company or its predecessor, the Flint & Pere Marquette Railway Company, or the trustees of either of said companies never obtained any title to said lands.

And your informant further shows, as he is advised and believes, that some parcels of said land have been disposed of *of* by contract or deed by said Flint & Pere Marquette Railroad Company, through its trustees and land commissioner, to persons whose names and residences are not known to this informant and whom he asks leave to make parties to these proceedings when he shall be able to discover that there are such parties who have claims to any part or portion of said lands described in Exhibit "A" to avoid further litigation and for the purpose of bringing before this court each and every person who is interested in the subject-matter of this proceeding and can properly be made parties hereto.

And your informant charges, as he is advised and believes, that the agent of said Flint & Pere Marquette Railroad Company and so in effect said company at the time that these lands were listed as railroad lands had knowledge that the same were shown by the minutes of the survey made by the surveyor general of the United States for the State of Michigan to be swamps lands of that kind and character granted to the State of Michigan by the act of 1850, and notwithstanding such knowledge he caused the same to be listed as railroad lands and kept the knowledge of the true character of the lands from the State board of control of railroads for the State of Michigan.

And, further, your informant alleges and states, as he is advised and believes and as can be well proven by the officials of the land department of the State of Michigan, application has been made to the Land Department of the United States, at Washington, and against this pretended claim and cloud upon the title of the State of Michigan of said lands to have the claim of said railroad company cancelled in order that the legal title of the State of Michigan might appear clear and unclouded, and that the said Land Department declined to take any action in the premises, but intimated that any steps necessary to be taken could be taken by the State in the courts, and that it was no matter in which the General Government could interfere.

And your informant charges and alleges that the actions taken by the agents of the said Flint & Pere Marquette Railway Company and the Flint & Pere Marquette Railroad Company and the trustees of the said Flint & Pere Marquette Railroad Company are fraudulent as against the State of Michigan and operated to impair its title to said lands and prevent the State from disposing of the same

to actual settlers and receiving therefor the value of said land, either in money or by the drainage and reclamation of *this* swamp and overflowed lands, for which they were originally granted to the State of Michigan.

And your informant further alleges that the State of Michigan has no full and complete remedy except in a court of equity, and that in order to protect the title of the State and free the same from cloud and prevent sales of said land and further sales of timber thereon and irreparable injury to the State it becomes and is necessary for the court of equity to interfere, and to that end, therefore, that the said defendant, The Flint & Pere Marquette Railroad Company, and said trustees, Oliver Prescott and William W. Prescott, and said land commissioner, A. W. Newton, defendants herein, and such other persons as may be found to have an interest in the subject-matter of this litigation and who may be admitted and made parties to this suit may, if they can, show why the State of Michigan shall not have the relief hereby prayed — according to their utmost ability, knowledge, information, and belief full, true, direct, and perfect answer make to each and every matter herein set forth, without oath (answer under oath being hereby expressly waived), as particularly as if the same was here repeated and they distinctly interrogated thereto, and that the said railroad company, trustees, and land commissioner be restrained and enjoined by order and decree of this court:

1. From the sales of any of the lands described in said Exhibit "A" or from selling any timber upon said lands or committing any waste, either directly or by their agents, and from asserting or claiming any title to said lands and premises, and that the title of the State of Michigan in and to said lands under and by virtue of the land grant of the Congress of the United States made September 28th, 1850, may be decreed and declared to be full, complete, and absolute, which decree may stand and operate as a removal of all clouds to said title by reason of the claim or claims made by the said defendants or any of them or other parties interested herein by virtue of said railroad grant or trust deed;

And that the said Flint & Pere Marquette Railroad Company and its trustees and land commissioner aforesaid, defendants herein, be required by the decree and order of this court to account to and with The State of Michigan, complainant herein, for any and all timber cut upon said premises directly by said defendants or by their agents or authority, and that said complainant may have decree for any amount due it upon such an accounting:

May it please the court to grant unto the complainant, The State of Michigan, the writ of injunction issued out of and under the seal of this court, both temporary and permanent, restraining and forbidding said defendants, their agents, attorneys, solicitors, from selling or offering for sale any of the lands described in Exhibit "A" or timber thereon, or authorizing any one to cut the said timber or commit waste upon said lands or in any manner interfering therewith, and restraining said defendants fully as above prayed and that the complainant, the said State of Michigan, may have

such other and further relief as the nature of the case requires and as to this court shall seem just and equitable.

Also may it please the court to grant unto the said complainant the writ of subpœna issued out of and under the seal of this honorable court, to be directed to the said Flint & Pere Marquette Railroad Company, Oliver Prescott, William W. Prescott, and A. W. Newton, therein and thereby commanding them, under a certain penalty to be inserted, to be and appear before this court upon a day certain, then and there to answer all and singular the premises and to stand and abide and perform such orders and decrees therein as to this court shall seem just and equitable.

And your informant will ever pray, etc.

MOSES TAGGART,
Attorney General.

MOSES TAGGART,
Solicitor for State.

EXHIBIT "A."

List of Lands.

Subdivision.	Sec.	Town.	Range.	Acres.
S w f'l ¼ of n w f'l ¼.....	7	17 north	3 west	50.43
W ½ of e ½.....	13	"	"	160.00
E ½ of n w ¼.....	13	"	"	80.00
E ½ of s w ¼.....	13	"	"	80.00
S e ¼ of s e ¼.....	15	"	"	40.00
E ½ of n w ¼.....	23	"	"	80.00
S w ¼ of n w ¼.....	23	"	"	40.00
N ½ of n w ¼.....	25	"	"	80.00
N ½ of s e ¼.....	27	"	"	80.00
S w ¼ of s e ¼.....	27	"	"	40.00
S ½ of s w ¼.....	27	"	"	80.00
S w ¼ of s w ¼.....	29	"	"	40.00
S e ¼ of n e ¼.....	31	"	"	40.00
S w ¼ of n e ¼.....	33	"	"	40.00
S e ¼.....	33	"	"	160.00
W ½.....	33	"	"	320.00
S e ¼ of s w ¼.....	9	17 north	4 west	40.00
S e ¼ of n w ¼.....	11	"	"	40.00
N e ¼.....	11	"	"	160.00
N ½ of s ½.....	11	"	"	160.00
S w ¼ of s w ¼.....	11	"	"	40.00
W ½ of n e ¼.....	13	"	"	80.00
E ½ of n w ¼.....	13	"	"	80.00
N e ¼ of s w ¼.....	13	"	"	40.00
W ½ of e ½.....	15	"	"	160.00
N ½ of s w ¼.....	15	"	"	80.00

List of Lands—Continued.

Subdivision.	Sec.	Town.	Range.	Acres.
E ½ of n w ¼	15	17 north	4 west	80.00
S w ¼ of n w ¼	15	"	"	40.00
N e ¼ of n e ¼	21	"	"	40.00
S ½ of n w ¼	21	"	"	80.00
S ½ of s e ¼	21	"	"	80.00
N e ¼ of s e ¼	21	"	"	40.00
S ½ of s w ¼	23	"	"	80.00
S w ¼ of s e ¼	23	"	"	40.00
W ½ of e ½	25	17 north	4 west	160.00
S ½ of n w ¼	25	"	"	80.00
N e ¼ of s w ¼	25	"	"	40.00
S w ¼	27	"	"	160.00
S w ¼ of s e ¼	27	"	"	40.00
S e ¼ of s e ¼	29	"	"	40.00
N ½ of s ½	33	"	"	160.00
N ½	33	"	"	320.00
N ½	35	"	"	320.00
N e ¼ of s w ¼	3	17 north	5 west	40.00
S e ¼ of s e ¼	11	"	"	40.00
S ½ of n e ¼	7	17 north	6 west	80.00
S e ¼ of n w ¼	7	"	"	40.00
Lot No. 2	9	"	"	37.30
S ½ of n w ¼	1	18 north	4 west	80.00
N e f'l ¼ of n w f'l ¼	1	"	"	38.02
N e ¼ of s w ¼	1	"	"	40.00
S e ¼ of s w ¼	11	"	"	40.00
N ½ of n e ¼	29	"	"	80.00
N w ¼ of n w ¼	15	18 north	6 west	40.00
S w ¼ of n w ¼	21	19 north	5 west	40.00
N e ¼ of s w ¼	21	"	"	40.00
N w ¼ of s e ¼	21	"	"	40.00
S w ¼ of n w ¼	27	"	"	40.00
N ½ of s w ¼	27	"	"	80.00
S w ¼ of s w ¼	35	"	"	40.00
N e ¼ of n w ¼	7	17 north	2 west	40.00
W f'l ½ of n w f'l ¼	7	"	"	92.09
N w f'l ¼ of s w f'l ¼	7	"	"	45.58
S w ¼ of s w ¼	35	"	"	40.00
N w ¼ of n e ¼	11	12 north	1 west	40.00
S e ¼ of n w ¼	11	"	"	40.00
N e ¼ of s w ¼	21	"	"	40.00
S ½ of n e ¼	5	15 north	6 west	80.00
S ½ of n e ¼	3	16 north	4 west	80.00
E ½ of s w ¼	3	"	"	80.00
S e ¼	3	16 north	4 west	160.00

List of Lands—Continued.

Subdivision.	Sec.	Town.	Range.	Acres.
S w ¼ of n w ¼	9	16 north	4 west	40.00
N ½ of n w ¼	9	"	"	80.00
N ½ of n w ¼	11	"	"	80.00
S w ¼ of n w ¼	11	"	"	40.00
N e ¼ of n w ¼	15	"	"	40.00
W ½ of n w ¼	15	"	"	80.00
N ½ of s ½	17	"	"	160.00
S e ¼ of n w ¼	23	"	"	40.00
S w ¼ of s e ¼	1	16 north	5 west	40.00
N w ¼ of n e ¼	9	"	"	40.00
S ½ of n e ¼	9	"	"	80.00
S w ¼ of s w ¼	9	"	"	40.00
E ½ of w ½	15	"	"	160.00
N e f'l ¼ of n w f'l ¼	1	17 north	13 west	39.88
S ½ of n e ¼	23	17 north	14 west	80.00
S e ¼ of n e ¼	25	"	"	40.00
Lot No. 1	25	"	"	56.95
Lot No. 2	25	"	"	49.95
Lot No. 3	25	"	"	48.10
Lot No. 4	25	"	"	38.10
E ½ of s e ¼	25	"	"	80.00
S w ¼ of s e ¼	25	"	"	40.00
E ½ of n e ¼	19	18 north	14 west	80.00
S w ¼ of n w ¼	1	19 north	14 west	40.00
S w f'l ¼ of s w f'l ¼	19	"	"	29.26
S w ¼ of n e ¼	7	20 north	14 west	40.00
N w ¼ of s e ¼	7	"	"	40.00
S w ¼ of s e ¼	7	"	"	40.00
N w ¼ of s w ¼	17	"	"	40.00
Island in	25	18 north	18 west	73.27
E ½ of n e ¼	15	14 north	7 west	80.00
S w ¼ of n e ¼	15	"	"	40.00
N e ¼ of s e ¼	15	"	"	40.00
W ½ of s e ¼	15	"	"	80.00
S e ¼ of n w ¼	15	"	"	40.00
N e ¼ of s w ¼	15	14 north	7 west	40.00
N w ¼ of s e ¼	17	16 north	8 west	40.00
N ½ s w ¼	25	"	"	80.00
S e ¼ of s w ¼	25	"	"	40.00
N e ¼ of s e ¼	1	13 north	1 east	40.00
Lot No. 4	3	13 north	2 east	60.20
Lot No. 6	5	"	"	62.37
S e ¼ of s w ¼	5	"	"	40.00
N e ¼ of s e ¼	5	"	"	40.00
W ½ of s e ¼	5	"	"	80.00

List of Lands—Continued.

Subdivision.	Sec.	Town.	Range.	Acres.
S w ¼ of s w ¼	33	14 north	2 east	40.00
W ½ of n e ¼	21	15 north	1 east	80.00
N ½ of n w ¼	27	"	"	80.00
S w ¼ of n w	27	"	"	40.00
N e ¼ of s w ¼	27	"	"	40.00
W ½ of s e ¼	27	"	"	80.00
W ½ of n w ¼	13	13 north	1 west	80.00
N e ¼ of s w ¼	13	"	"	40.00
N e ¼ of s e ¼	15	"	"	40.00
N e ¼ of s w ¼	35	"	"	40.00
N w ¼	35	"	"	160.00
S w ¼ of n w ¼	17	13 north	2 west	40.00
S ½ of s w ¼	1	14 north	1 west	80.00
S w ¼ of n e ¼	3	"	"	40.00
S ½	3	"	"	320.00
W ½ of s w ¼	5	"	"	80.00
S w ¼ of s e ¼	5	"	"	40.00
E ½ of s e ¼	5	"	"	80.00
N e ¼ of n e ¼	7	"	"	40.00
W ½ of n e ¼	7	"	"	80.00
N e ¼ of n w ¼	7	"	"	40.00
N w ¼ of s e ¼	7	"	"	40.00
E ½ of s e ¼	7	"	"	80.00
N ½ of n e ¼	9	"	"	80.00
S w ¼ of n w ¼	9	"	"	40.00
N e ¼ of s w ¼	9	"	"	40.00
W ½ of s e ¼	9	14 north	4 west	80.00
S e ¼ of s e ¼	9	"	"	40.00
N e ¼	11	"	"	160.00
N ½ of n w ¼	11	"	"	80.00
S e ¼ of n w ¼	11	"	"	40.00
N ½ of s w ¼	11	"	"	80.00
S e ¼ of s w ¼	11	"	"	40.00
N w ¼ of s e ¼	11	"	"	40.00
N e ¼ of n e	13	"	"	40.00
N w ¼ of n w ¼	13	"	"	40.00
N w ¼ of n e ¼	15	"	"	40.00
N ½ of n w ¼	15	"	"	80.00
S ½ of n e ¼	17	"	"	80.00
N e ¼ of n w ¼	17	"	"	40.00
S w ¼ of n w ¼	17	"	"	40.00
S e ¼ of s w ¼	11	15 north	1 west	40.00
N w ¼ of s w ¼	23	"	"	40.00
N e ¼ of n e ¼	15	15 north	1 west	40.00
S e ¼ of s w ¼	23	"	"	40.00

List of Lands—Continued.

Subdivision.	Sec.	Town.	Range.	Acres.
S ½ of n ½	27	15 north	1 west	160.00
N ½ of s w ¼	27	"	"	80.00
S e ¼ of s w ¼	27	"	"	40.00
S e ¼	27	"	"	160.00
N w ¼ of n e ¼	33	"	"	40.00
S w ¼ of n w ¼	33	"	"	40.00
N e ¼ of s w ¼	21	16 north	1 west	40.00
N e ¼ of n e ¼	29	"	"	40.00
W ½ of s w ¼	5	16 north	2 west	80.00
S ½ of n e ¼	13	14 north	13 west	80.00
Lot No. 3	13	"	"	39.83
S w f'l of n w f'l ¼	7	15 north	13 west	37.51
N w f'l ¼ of s w f'l ¼	7	"	"	37.04
S e ¼ of s w f'l ¼	7	"	"	40.00
Lot No. 1	7	15 north	14 west	52.12
W ½ of s e ¼	11	"	"	80.00
N e ¼ of s e ¼	35	"	"	40.00
Lot No. 6	11	16 north	13 west	47.16
N w ¼ of n w ¼	13	"	"	40.00
S e ¼ of n e ¼	19	"	"	40.00
N e ¼ of s e ¼	19	"	"	40.00
S e ¼ of n e ¼	27	"	"	40.00
E ½ of s e ¼	27	"	"	80.00
N w ¼ of n e ¼	25	16 north	14 west	40.00
N e ¼ of n w ¼	25	"	"	40.00
S w ¼ of n e ¼	27	"	"	40.00
E ½ of W ½	27	"	"	160.00
S e ¼	27	"	"	160.00
N w ¼ of s w ¼	1	16 north	15 west	40.00
N ½ of s e ½ & n e ¼ of s w ¼	1	"	"	120.00
S w ¼ of s e ¼	1	"	"	40.00
S w ¼ of n e ¼	27	"	"	40.00
S e ¼ of n w ¼	27	"	"	40.00
N ½ of s e ¼	27	"	"	80.00
S w ¼ of s e ¼	27	"	"	40.00
W ½ of n w ¼	33	"	"	80.00
S ½	33	"	"	320.00
E ¼ of n e ¼	17	17 north	7 west	80.00
S w ¼ of n w ¼	21	"	"	40.00
S w ¼ of s e ¼	35	"	"	40.00
N w ¼ of n w ¼	13	17 north	8 west	40.00
S e ¼ of n w ¼	13	"	"	40.00
S w ¼ of s w ¼	15	"	"	40.00
S e ¼ of n e ¼	21	"	"	40.00
S e ¼ of s e ¼	21	"	"	40.00

List of Lands—Continued.

Subdivision.	Sec.	Town.	Range.	Acres.
N e ¼	29	17 north	8 west	160.00
E ½ of s e ¼	29	"	"	80.00
N e ¼ of n w ¼	33	"	"	40.00
Lot No. 4	11	18 north	7 west	35.10
Lot No. 3	19	"	"	48.20
N e ¼ of n e ¼	23	"	"	40.00
S e ¼ of n e	35	"	"	40.00
E ½ of n e ¼	29	19 north	7 west	80.00
N w ¼ of n e ¼	29	"	"	40.00
E ½ of s e ¼	29	"	"	80.00
S e ¼ of s w ¼	17	13 north	3 east	40.00
W ½ of n e ¼	19	"	"	80.00
E ½ of n w ¼	19	"	"	80.00
N e ¼ of s w ¼	19	"	"	40.00
N w ¼ of s e ¼	19	"	"	40.00
Lot No. 2	19	"	"	44.00
S w ¼ of n e ¼	29	"	"	40.00
S e ¼ of n w ¼	29	"	"	40.00
W ½ of n w ¼	29	"	"	80.00
N ½ of s e ¼	29	"	"	80.00
Total acres				15,337.46

STATE OF MICHIGAN, } *ss:*
County of Ingham, }

Henry S. Sleeper, being duly sworn, doth depose and say that he is the deputy commissioner of the land department for the State of Michigan and has had charge in large part of the records of said office for many years; that he has heard read the annexed bill of complaint or information and knows the contents thereof, and that the same is true of his own knowledge except as to the matters stated on information and belief, and as to these matters he believes it to be true.

That the original minutes of the survey of the United States and the surveyor's report and plats made by said surveyor general, showing the swampy lands and the parts and portions of each subdivision of lands which are swampy and overflowed and were by the act of Congress of the United States granted to the State of Michigan in 1850, are on file in the land department of the State of Michigan; that said minutes of the original survey and the plats and maps thereon prepared by the surveyor general shows the swamp and overflowed land granted to the State of Michigan and described in said information and that part and portion of each subdivision, the

greater part of which is swampy and overflowed, as in said information alleged; that, as deponent is advised and believes, and as the records of the office show and indicate, the said maps made upon the plats on file in the office of the land department were made by the surveyor general of the United States in pursuance of the proposition of the Commissioner of the United States Land Department that the State of Michigan might accept according to the minutes of the original surveys and the act of the legislature of the State of Michigan for the year 1851, accepting said grant according to the minutes of the original survey in the office of the surveyor general of the United States.

And, further, this deponent saith that it is easy to determine and identify the swampy and overflowed lands granted to the State of Michigan by the act of 1850 from said maps and plats, and that the lands shown by the plats and maps thereon are the same and identical lands shown by the surveyor's minutes to be swampy and overflowed, and that such maps were prepared from the minutes of the original survey, as appears by the certificate of the surveyor general attached thereto.

That from the date of acceptance by the legislature of the grant of swamp and overflowed lands by the act of 1850 the land department of the State of Michigan has treated such acceptance and such adjustment and identification as final and conclusive of the lands granted by the Congress of the United States to the State of Michigan, as appears by the letters and files of this office and as deponent knows of his own knowledge in part, and particularly since he has been connected with the office of the State land department; and, further, deponent saith that repeated efforts have been made by his department to secure an adjustment of these land matters, and particularly to have the Interior Department, at Washington, cancel the pretended and unfounded claims of the said defendants mentioned in said information, but that all of said efforts were unsuccessful, and every attempt to confirm the title of the State, and to remove all cloud therefrom through the department at Washington, *have* utterly failed; and further deponent saith not.

HENRY S. SLEEPER.

Subscribed and sworn to before me this 5th day of December, A. D. 1887.

L. H. BRIGGS,
Notary Public in and for Ingham County, State of Michigan.

STATE OF MICHIGAN, } ss:
County of Kent, }

Menzo Swart, being duly sworn, deposes and says that he is a resident of the city of Flint, State of Michigan, and examining timber agent for the State of Michigan.

That he has been timber agent for the State of Michigan for a period of eight years or thereabouts. During a large part of such

time he has been employed by the State in looking after State lands.

And, further, deponent states that as a part of his duty as said examining agent of land for the State of Michigan he has examined certain of the lands said to be contained in the list of lands certified to the Flint & Pere Marquette Railroad Company and made inquiry and examination as to the commission of waste upon the lands described in Exhibit "A," attached to the information against the Flint & Pere Marquette Railroad Company and its trustees, and from such examination deponent states that valuable timber has recently been cut and is now being cut upon the lands described in said Exhibit "A," which land is claimed by the State of Michigan to be owned by it under and by virtue of the grant and act of Congress made in the year 1850, which timber is of the value of several thousand dollars.

And, further, deponent states, as he is advised and believes, the cutting of said timber is done by virtue of authority from said defendants or through their agent and land commissioner, but whether such authority is direct or by virtue of a pretended deed of said lands claimed to be owned by the State of Michigan this deponent is not advised.

And, further, this deponent states that timber has been cut in previous years upon other lands described in said Exhibit "A" and which are claimed to have been granted to the said Flint & Pere Marquette Railroad Company by the railroad grant of the United States for 1856.

And, further, deponent states, as he is informed and believes, that the said Flint & Pere Marquette Railroad Company, through its trustees and land commissioner, hold — of the land- certified to it for sale, including those which are described in said Exhibit "A," of the information to which this affidavit is attached, and that unless restrained by order of court said defendants are liable at any time to dispose of lands which are described in said Exhibit "A."

MENZO SWART.

Subscribed and sworn to before me this seventh day of December, A. D. 1887.

W. S. MARQUENETTE,
Notary Public, Kent County, Michigan.

STATE OF MICHIGAN, } ss:
County of Ingham, }

Leland H. Briggs, being duly sworn, doth depose and say that he is chief clerk in the State land department of the State of Michigan; that he has examined the lands described in Exhibit "A," attached to the information to which this affidavit is attached, and that said lands are of that class indicated in said land office upon the plats and maps made by the surveyor general of the United States as swamp and overflowed lands and which the State of Michigan claims by virtue of the land grant of 1850, referred to in said information.

And, further, deponent says that the said lands described in said Exhibit "A" are also included in the lists of lands approved to the State of Michigan by the Secretary of the Interior to aid in the construction of a railroad "from Amboy by Hillsdale and Lansing and from Grand Rapids to some point on or near Traverse bay," and known as the "Grand Rapids & Indiana railroad," as shown by certified copies now on file and of record in this office and *and* in abstracts from the General Land Office, also now on file in this office, and are thus shown to be claimed by said railroad company by virtue of the act of Congress of the United States approved June 30, 1856, and the act of the legislature of the State of Michigan of 1857.

LELAND H. BRIGGS.

Subscribed and sworn to before me this 12th day of December, A. D. 1887.

WM. W. COOK,
Notary Public in and for Ingham County, State of Michigan.

Information filed December 13, 1887.

(Endorsed:) State of Michigan. The circuit court for the county of Ingham. In chancery, *ss.* Upon filing the foregoing bill of complaint or information and the accompanying affidavits and exhibit let an injunction issue as prayed for in said information. G. T. Gridley, circuit judge. Dated Dec. 13, 1887.

* * * * * * *

STATE OF MICHIGAN:

In the Circuit Court for the County of Ingham. In Chancery.

The joint and several answer of The Flint and Pere Marquette Railroad Company, Oliver Prescott, William W. Crapo, and Alfred W. Newton, defendants, to the information filed in said court by Moses Taggart, attorney general for the State of Michigan, for and in behalf of said State.

These defendants, jointly and severally, answering the said information severally and not the one for the other, answer and say:

(1.) The said Flint and Pere Marquette Railroad Company says, by way of answer to said information, that it has not now and never has had any ownership in any of the lands mentioned in the said information other than its station grounds and depot buildings, and has no power or authority over the same, except that it has a right to call the trustees, said Prescott and Crapo, to account for the sale of said lands and the disposition of the proceeds thereof in accordance with the terms and conditions of the several trust deeds by which the said title and control of the said lands were conveyed to said Prescott and Crapo, as trustees, by the Flint & Pere Marquette Railway Company, a corporation formerly owning and controlling the railroad now owned and controlled by the defendant corporation. The said Flint & Pere Marquette Railroad

Company, further answering, says that it denies that the State of Michigan has any right, power, or control over the said lands, or any of them, in the said information specifically stated and described in the schedule, Exhibit "A," annexed to the said information and made a part thereof.

(2.) And the said Alfred W. Newton, one of said defendants, answering for himself, says that he claims no right, power, or control over the said lands or any of them, except such as has been conferred upon him by power of attorney executed by the said Prescott and Crapo, trustees, under and by virtue of which he acts as attorney in fact for the said trustees and under their general direction, but without beneficial interest in the said property.

(3.) And the said Oliver Prescott and William W. Crapo, trustees, for answer state that they are the owners of the lands mentioned in Exhibit "A" annexed to said information, except so far as the same have been previously sold and disposed of, and except the following-described parcel, to wit, lot number one, of section seven, in township fifteen north, of range fourteen west, containing 52.12 acres, which last-mentioned parcel these defendants do not claim and never have claimed to be the owners thereof. The title and right of these defendants to the said real estate in Exhibit "A" described, with the exception of the said fractional lot above described, is derived under the act of Congress of June 3, 1856, granting lands to the State of Michigan to aid in the construction of certain railroads therein named and under and through the act of the legislature of Michigan approved February 14th, 1857, granting and conferring upon the Flint & Pere Marquette Railway Company such portion of the lands granted by said act of Congress to the State as appertained to the line of railroad from Pere Marquette to Flint, as in said act of Congress and in said act of the legislature particularly mentioned, and through sundry intermediate conveyances from the said Flint & Pere Marquette Railway Company and those claiming under said company to these defendants.

(4.) Further answering, the said Prescott and Crapo, trustees, say that they admit, as stated in the said information, that the Congress of the United States, by the act of September 28, 1850, granted to the several States named in the act, including the State of Michigan, the whole of those lands in said State which were swamp and overflowed and made unfit thereby for cultivation and which remained unsold at the passage of said act of Congress, the said State of Michigan taking said lands in trust, the proceeds to be applied exclusively, so far as necessary, for the purpose of reclaiming said lands by means of levees and drains, as in said act of Congress particularly described, and admit, as stated in said act of Congress, that it became and was the duty of the Secretary of the Interior, as soon as practicable after the passage of the act, to identify the lands granted by virtue thereof and to make out a list and plats thereof and transmit the same to the governor of Michigan; and thereupon, afterwards, upon the request of the governor of the State of Michigan, it became the duty of the authorities of the United States to issue to the said State of Michigan patents for said lands,

and that in such identification, if any legal subdivision of land was, as to the greater part thereof, wet and unfit for cultivation, the whole of said legal subdivision should be included in said list; otherwise the whole thereof should be excluded therefrom.

And these defendants, further answering, state that they deny that the effect of the grant was, as stated in said information, to vest in the State of Michigan title to all the swamp and overflowed lands located therein until the Secretary of the Interior should identify the descriptions as being within the grant, and deny that the fee-simple title to said lands passed or could pass under said act to the State of Michigan until a patent should issue therefor from the United States pursuant to the terms of said act of Congress, and deny from that day thenceforth the title to the lands mentioned in "Exhibit A" in said information was asserted by the State of Michigan or recognized by the General Government of the United States and the Land Department of the United States, at Washington, as vesting in the State of Michigan.

(5.) And these defendants, further answering, say that they admit that the Secretary of the Interior, through the surveyor general of the United States for the State of Michigan and the Commissioner of the General Land Office of the United States, proposed methods for identifying the particular descriptions of land intended by said act to pass to the State of Michigan, and that it was arranged that as to the State of Michigan the grant would be and should be accepted by said State upon the basis of the notes of the surveys on file in the surveyor general's office pursuant to the terms of the act of the legislature of Michigan approved June 28, 1851. Whether correspondence passed between the Commissioner of the General Land Office of the United States and Charles Noble, the surveyor general, and Governor Barry, of the State of Michigan, as detailed and set out in the said information, these defendants are not advised, and therefore neither admit nor deny the same, but leave the informant to such proof thereof as he may be advised. But these defendants deny that any such correspondence could have effect to increase the rights of the State of Michigan beyond the terms of the act of Congress granting said lands.

(6.) Further answering, the said Prescott and Crapo, trustees, say, relative to the allegations concerning the survey of public lands belonging to the General Government, that the instructions and regulations for such surveys are public documents, and to such instructions and regulations these defendants refer, neither admitting nor denying the averment in the said information in that regard. But these defendants deny that any arrangement made between the Land Commissioner of the United States and the legislature of the State of Michigan had the legal effect to perfect in the State of Michigan full, complete, and absolute title to all the lands shown in the surveyor general's minutes to be swamp and overflowed prior to the confirmation of such title by the issue of patent as provided in said act of Congress.

(7.) Further answering, the said Prescott and Crapo, trustees, say that it is a matter of common knowledge, as shown by the reports

of the State land office of Michigan, and as shown by the reports of the surveyor general, from the year 1840, as long as the surveyor general's office remained in the State of Michigan, to wit, the year 1857, and as shown by the reports of the Commissioner of the General Land Office, and, as the fact was, that very many of the field-notes reported to the surveyor general by his deputies, purporting to be field-notes of surveys made in the State of Michigan, were false and fraudulent surveys, never, in fact, having been made in accordance with said field-notes, and the maps drawn from said field-notes were purely fictitious, and that when these *these* facts came to the knowledge of the surveyor general and of the Commissioner of the General Land Office, at Washington, the said false and fraudulent surveys were rejected and new surveys of the same lands were made in order that true and correct field-notes might be prepared and filed showing the correct survey of said lands, and since that time it has always been the practice and so understood by all parties dealing with said lands to regard the field-notes of said resurvey as the proper and only field-notes having recognized authority, and the maps and plats based upon said resurveys as the only recognized maps and plats having authority, and the same were adopted and accepted both by the State of Michigan and the United States to be in lieu of and as abrogating the previous false and fraudulent surveys, field-notes, maps, and plats, and these defendants deny that lands which were not in fact swampy and overflowed lands and which were shown by said false and fraudulent surveys to be swamp and overflowed lands passed to the State of Michigan or that the State of Michigan acquired any right thereto by reason of the arrangement for the adjustment of the swamp-land grant as stated in said information, and aver that the resurveys made pursuant to the authority of Congress and by the proper officers in that regard and the field-notes of the same and the maps and plats based thereon were the notes of the surveys to which the arrangement for identifying the lands between the State and the Federal Government referred and which have ever since been so regarded both by the State and the Federal Government; and these defendants deny that it was competent for any of the officers of the Federal or State Government to transfer the title from the United States to the State of Michigan under said act of Congress unless the lands were of the character described in the said act, and deny that the act itself operated to convey any present right to any of the lands except such as were of the character specified in said act of Congress.

(8.) Further answering upon information and belief, these defendants say that, being deceived by the false and fraudulent surveys aforesaid, the Secretary of the Interior did approve for patent, and patents were issued to the State of Michigan, for very many thousand acres of lands which were not in fact swamp and overflowed lands, unfit for cultivation; that the State of Michigan has received patents for nearly six million acres of land as enuring to the State under said act of September 28, 1850; and of the lands thus patented to the State these defendants aver that more than

fifty per cent. thereof were not of the character contemplated by the said act, but the same having been approved by the Secretary of the Interior and patented by reason of the said false and fraudulent surveys and the deception which was thereby practiced upon the Secretary of the Interior, and that the State of Michigan, in justice and equity, had no right to receive and appropriate as passing under said grant any of the lands excepting such as were in fact swampy and overflowed so as to be thereby rendered unfit for cultivation.

(9.) Further answering, the said Prescott and Crapo, trustees, say that the said information in the third clause thereof is vague, uncertain, and insufficient in its averments, in that it says that some of these lands have been patented to the State; and these defendants deny that such averment is true; and the said information avers that as to others of the said lands lists have been prepared and certified to the State, and as to others lists have been prepared and not certified, and as to still other descriptions no list whatever has been prepared, although the Department of the Interior, at Washington, and particularly the Land Department, had been requested to certify and patent the said swamp lands to the State of Michigan; and these defendants deny that said assertion is true, and deny that lists of any of these lands have been prepared and certified by any of the departments at Washington as properly appertaining to the swamp-land grant to the State of Michigan, and deny that the State of Michigan for a period of thirty years from and after the date of said grant claimed or assumed to claim any of the said lands in Schedule A described, with the exception of the fractional lot hereinbefore disclaimed, and deny that the lands in said Schedule A, annexed to said information, are in fact swamp and overflowed lands and of the character specified in said grant.

(10.) Further answering, said Prescott and Crapo, trustees, admit that on or about June 3d, 1856, the Congress of the United States granted to the State of Michigan certain lands for the benefit of certain railroads named in said act, and that the legislature of Michigan, by act of February 14th, 1857, conferred upon the Flint & Pere Marquette Railway Company, a corporation organized under the laws of Michigan, the lands, franchises, powers, and privileges conferred by said act of Congress to aid in the construction of a railroad from Pere Marquette to Flint, and that thereafter the Flint & Pere Marquette Railway Company went into the hands of a receiver, and that afterwards another corporation was organized, under the general railroad law of Michigan, known as the Flint & Pere Marquette Railroad Company, but deny that the said Flint & Pere Marquette Railroad Company took title to the lands and interests therein mentioned formerly held by the Flint & Pere Marquette Railway Company and still holds and claims to hold said lands, but state the fact to be as hereinbefore set forth in this answer, and admit that the lands granted by Congress for railroad purposes were upon the odd-numbered sections, and that indemnity lands were provided for, and that the lists were to be prepared and certified by the Secretary of the Interior, and that an agent was to be appointed by the governor

of the State to select the indemnity lands outside the six-mile limits, and that the lands mentioned in Exhibit "A," excepting the said fractional lot disclaimed, have been certified by the Secretary of the Interior and the Commissioner of the General Land Office to the State of Michigan as lands identified as being within the act of June 3d, 1856, for the benefit of the Flint & Pere Marquette Railway Company; and these defendants state that no patents had ever been issued to the State of Michigan nor to the Flint & Pere Marquette Railway Company for the lands which inured to it under said grant of June 3d, 1856, but the title thereto passed to the State of Michigan by virtue of the act of Congress aforesaid, and the title passed from the State of Michigan to the said Flint & Pere Marquette Railway Company by virtue of the act of February 14th, 1857, hereinbefore mentioned, and the identification of the lands as being such as passed by the grant was completed upon the certification of the Commissioner of the General Land Office and the Secretary of the Interior, as hereinbefore stated.

(11.) And the said Prescott and Crapo, trustees, further answering, admit that the said Flint & Pere Marquette Railroad Company is a corporation organized and operated under the laws of Michigan, and state that the Flint & Pere Marquette Railway Company prior to the organization of the defendant railroad company conveyed all its interest in said lands to these defendants, said Prescott and Crapo, as trustees, in trust for the benefit of certain bondholders, as in said trust deeds particularly described, and admit that the bonded indebtedness of the railroad company is greater than the value of the lands described in said Exhibit "A," and admit that the lands described in said Exhibit "A" are worth the sum of fifty thousand dollars and upwards, and admit that there is valuable timber growing upon the same, and admit that very much of the timber from some of the descriptions of land in said Exhibit "A" had been cut, and state the fact to be that the greater portion of the lands in said Exhibit "A" described and all thereof which lie east of the range of townships known as range five west, in said State, have been upon the market as the lands of the said railroad company and offered for sale now for more than twenty years, and that the greater portion of said lands have been sold, there being less than one-fifth of the acreage described in said Exhibit "A" yet remaining unsold and the property of these trustees, the other four-fifths having been sold, and many of said parcels so sold have been occupied by the purchasers for more than fifteen years, and the title which was conveyed by the said railway company or its trustees to the said purchasers has never been questioned until the filing of this information; and these defendants deny that said lands are all unoccupied lands, and deny that the State of Michigan had title to said lands or any of them under and by virtue of the swamp-land grant of 1850, but aver the fact to be that the State of Michigan took title thereto under and by virtue of the act of Congress of June 3d, 1856, and the acceptance thereof by the State of Michigan, and that the title thus conveyed to the State was conveyed by it to the said railroad company by the said act of Febru-

ary 14th, 1857, and by the acceptance thereof by the said railway company and by the performance of the conditions thereof the title became vested in said railway company; and these defendants state and insist that the title conveyed by the said railway company and the trustees to the purchasers of something over four-fifths of the lands mentioned in said Exhibit "A" was a perfect title in fee simple, and that the State has no claim thereto and never had any claim thereto, except as it received the title from the United States under the said grant of June 3d, 1856, which title was transferred by the State to the said railroad company for railroad purposes.

(12.) And these defendants, Prescott and Crapo, trustees, state and insist that in law the certificate of said lands described in Exhibit "A," to the State of Michigan, for the benefit of the Flint & Pere Marquette Railway Company, and the identification thereof as passing under said act of June 3, 1856, in and of itself was an adjudication by the said Secretary of the Interior that the lands therein described were not of the character designated in the swamp-land act of 1850 and a conclusive adjudication that said lands were included within said railroad grant of 1856.

(13.) And said defendants, further answering, say that upon the lands described in Exhibit "A" and yet remaing unsold and claimed and held by said Prescott and Crapo, trustees, there is no valuable timber of any account, and deny the allegation in the information that the said timber was being cut or about to be cut, but state that said lands were upon the market; that the same are valuable mainly for agricultural purposes, and that the said Prescott and Crapo desire to sell the same to actual settlers as soon as the same can be sold at their fair market values.

(14.) And these defendants deny the allegation in said information stated that the agent of the Flint & Pere Marquette Railway Company, and so in effect said company, at the time these lands were listed as railroad land, had knowledge that the same were shown by the minutes of the survey made by the surveyor general of the United States for the State of Michigan to the swamp lands of the character granted to the State of Michigan by the act of 1850, and that he kept the knowledge of the true character of the lands from the State board of control of railroads for the State of Michigan, and state that the said allegation is absolutely without foundation in fact; and these defendants deny that the State of Michigan is, as stated in said information, the owner of the full, complete, and absolute title to said lands, and deny that in case the State did hold such title it would be without redress in a court of law, and deny that a court of equity is a proper tribunal in which to try the question of title to said lands.

(15.) Upon information and belief these defendants deny that it was the practice of the surveyor general in making the maps of the lands from the field-notes to mark the letter "S" upon any of the lands to indicate that they were swamp lands, and state upon information and belief that the said letter "S" appearing upon the plats in the State land office has been placed there without authority, and

has no legal force or effect as indicating the character of the land upon which the same is placed.

(16.) And these defendants further state that it was the policy of the Federal Government and also of the State government to so treat the questions which arose under various land grants as not to embar-ass the settlement of the country and the sales and development of the land, and as the time for identifying the particular descriptions which should pass under the act of 1850 would necessarily be of considerable duration, and in the meantime many of the lands might be sold by the United States which were really of the character mentioned and intended to pass under the act of 1850, so that titles might become thereby complicated, the legislature of Michigan enacted that the State should not sell any of said lands claimed as enuring to it under the swamp-land grant until the patents should be received from the United States, and further provided by the act of February 14, 1853, that the State treasurer should be authorized to receive from the General Government any moneys that might have been theretofore received or that might thereafter be received for any swamp lands, and to release the interest of the State in any lands sold or entered with warrants to purchasers or their assigns, and that said act continues in force, and to the same end the act of Congress of March 2d, 1855, and the act of Congress of March 3d, 1857, were passed with a view of preventing conflicts of title, and so that the settlement and development of the country should not be retarded, and these defendants claim and insist that the said acts and policy adopted by the State of Michigan and other acts in that regard and the acts and policy of the Federal Government have been such as to estop the State of Michigan from claiming any lands as against purchasers under the General Government, even if such lands were of the character designated in said swamp-land act of 1850, as the State has consented and agreed to receive in lieu of said lands the money from the General Government therefor, and that the questions of adjusting these several grants are questions which belong to and should be settled by the authorities of the United States and the authorities of the State of Michigan with each other, and should not be used to the prejudice of citizens who have in good faith purchased either from the State or from the United States.

(17.) And defendants, further answering, state that the claim now put forward in the information is a claim but recently made; that it has never been authorized by the legislature, and while it was well known that there were many questions connected with the adjustments of the grant remaining unsettled, yet until within a very recent period it has never been supposed that these questions would affect the title to lands claimed and held adversely.

(18.) Further answering, defendants say that if the State became the owner of the full and absolute title to these lands at the time of the passage of the swamp-land act, in 1850, more than thirty-seven years have elapsed since said right and title accrued to the State, and that by the provisions of the laws of Michigan the State is now prohibited from bringing any suit for the recovery of lands unless

the same is brought within twenty years from the time the right to enter first accrued, and these defendants claim the benefit of the statute of limitations to quiet, confirm, and settle the title to the lands embraced in said Exhibit "A."

(19.) Defendants, further answering, state that in the year 1873 the legislature of Michigan provided that the lands enuring to the several railroad companies under grants from the United States should be listed for taxation and should be assessed and taxed the same as private lands, and to that end instructed the auditor general to obtain from the General Land Office, at Washington, lists of the lands which enured to the railroad companies under the act of June 3d, 1856, and to cause the same to be sent to the different counties in order *to* that said lands might be placed upon the assessment-rolls for taxation; and state, upon information and belief, that, pursuant to such authority, the auditor general obtained such lists and said lands were placed upon the assessment-rolls for taxation in the townships in which they were located and taxed accordingly, and that said Flint & Pere Marquette Railway Company and those claiming under it have since that date paid the taxes so assessed upon said lands regularly each year, and that among the lands so treated and assessed as railroad lands were the lands described in Exhibit "A," annexed to the information, and that the same have been assessed and taxed regularly year after year, the same as other private lands, ever since, and said taxes have been paid by the said railway company and those claiming under it, whereby the State conclusively certified that the lands mentioned in said Exhibit "A" passed to the said railway company under the said act of Congress of June 3d, 1856.

(20.) Defendants, further answering, say that in 1859 and 1860 nearly all the lands described in Exhibit "A," with other lands certified by the Secretary of the Interior as enuring to the State of Michigan for the benefit of the railroads therein named, by the act of June 3d, 1856, were listed and certified by the proper officers of the United States as enuring to the State under said act, and that copies of said lists were sent to the proper State authorities and have been on file in their possession ever since, whereby the State had notice that the lands mentioned in Exhibit "A" had been certified as lands belonging to the railway company under the legislation aforesaid.

(21.) Defendants, further answering, say that the State of Michigan employed a trespass agent to look after the public lands and prevent trespasses thereon and to collect for trespasses which may have been committed thereon, and that for many years the lands known as railroad lands were among the lands which said trespass agent was required to guard and protect against trespass, and that large sums of money were collected and paid into the State treasury for trespasses upon said railroad lands, as appears by the official reports of the State land office and said trespass agent.

(22.) Defendants further say that said Flint & Pere Marquette Railway Company in the year 1870 caused to be prepared a book of plats of the townships along the line of its railroad, embracing

the townships in which lands enuring to it under said grant from the United States were claimed, and that upon said plat book the said lands claimed as railroad lands were colored; that in the year last mentioned said book of plats was taken to the State land office by the representative of said railway company, and the commissioner of the State land office, Hon. Benjamin D. Pritchard, was requested in writing to note upon the odd-numbered sections shown upon said book of plats, viz: (1.) All swamp lands patented by the United States to the State to be marked in ink on each forty or fraction. (2.) All swamp lands claimed by the State not yet patented by the United States to the State to be marked in ink upon each forty or fraction. (3.) Any other State lands to be appropriately noted. (4.) If any lands claimed by the State conflicting with other claims, the same to be noted. (5.) The date of the Government survey of each township and of all resurveys as shown by the surveyor general's record in your office.

(6.) Add certificate explaining signification of designation marks used, and that careful comparison has been had and all lands marked as shown by record in State land office; which application was made to the said commissioner of the State land office at Lansing December 2nd, 1870, and afterwards the said book was returned by said commissioner to said railway company, with the certificate of said commissioner thereto attached, of which certificate the following is a copy: "State of Michigan, State land office, Lansing, December 13th, 1870. I, Benjamin D. Pritchard, commissioner of the State land office, do hereby certify that the annexed, on pages 1 to 125, inclusive, exhibits a true statement of 'State swamp lands' granted to the State of Michigan by the act of Congress approved September 28th, 1850, and the disposition of said lands, as appears by the records on file in this office. In testimony whereof I have hereunto set my hand and affixed the seal of the State land office, at Lansing, on the day and year above written. Benjamin D. Pritchard, com. State land office." To which certificate was affixed the seal of the State land office. Accompanying said certificate was the certificate of the secretary of state, under the great seal of the State, certifying that Benjamin D. Pritchard was the commissioner of the State land office, authorized to make such attestations, and that full faith and credit ought to be given to his official acts in all courts of justice and elsewhere. These certificates were annexed to the said book of plats and were taken by the said railway company as conclusive evidence that the State made no claim to lands not indicated upon said book of plats as State lands or as lands claimed by the State.

And these defendants state that none of the lands described in said Exhibit "A" were marked upon the said book of plats as claimed by the State except the fractional lot hereinbefore disclaimed; and in the selling of lands the said railway company and those claiming under it have acted and relied upon said certificate of the commissioner of the State land office and have believed and still believe that the same is true; and by reason of such certificate and the reliance placed thereon by the said railway company and

those claiming under it these defendants now insist that the State is estopped from claiming the lands described in said Exhibit "A;" and defendants state therefore that the claim now set up in behalf of the State is false and fraudulent and cannot receive countenance in a court of justice.

(23.) Defendants, further answering, say that in the year 1881 the State of Michigan, being desirous of promoting immigration and of having the unsettled lands of the State occupied and improved in order to increase the prosperity of the State, appointed a commissioner of immigration, under whose direction and pursuant to legal authority there was published for general circulation a pamphlet entitled "Michigan and its resources;" that this pamphlet embraced about 220 pages, with maps and illustrations, and described the general features of the climate and soil of Michigan and the reasons why it was desirable as a place of residence; that many thousand copies of said pamphlet were circulated throughout the United States and foreign countries by the said commissioner of immigration and others interested in promoting the welfare of the State; that for the purpose of showing the quantity of lands vacant and unimproved in the State open for settlers said pamphlet stated the number of acres claimed as swamp lands and the number of acres of railroad lands belonging to the several companies, and in giving the acreage of railroad lands for sale in each of the counties the lists which were sent out from Washington by the Secretary of the Interior and which were on file in the State land office and the office of the auditor general at Lansing were relied upon as showing the lands that belonged to the railroad companies, and thus the State of Michigan certified to the world at large that these lands as claimed by the railroad companies as appertaining to them by the grant of June 3d, 1856, and under the act of the State of February 14th, 1857, were owned by the railroad companies, and that good title thereto might be conveyed to such parties as should purchase the same and settle thereon, thus demonstrating that at the date of the publication of said pamphlet the State of Michigan made no claim to the lands mentioned in said Exhibit "A" nor to the other lands embraced in the said railroad grants, but regarded the same as the property of the railroad company and invited all who desired homes to buy said lands from the railroad company; that said pamphlet passed through several editions. The first edition was issued about the middle of December, 1881, and (upon information and belief) consisted of twelve thousand copies and was exhausted by the first of April, 1882. About that time a second edition of twenty thousand copies, enlarged and revised, was issued, which edition was soon after enlarged by an additional twenty thousand copies, and in 1884 a third edition of many thousand copies was issued, and in the year 1883 the governor of the State of Michigan, in his retiring message to the legislature, at the beginning of its session, spoke of the issue of said pamphlet and its effect in inducing settlement as follows: "Upwards of fifty thousand settlers have been added to the agricultural class of our population during the past

year. The most important agency in this labor has been the publication and distribution of the pamphlet entitled 'Michigan and its resources,' about 37,000 copies of which have gone abroad through the United States and Europe, together with more than 7,000 copies of pamphlets in which its substance was translated into the languages of Germany and Holland. The wealth of the State has been materially augmented by this action, and the sales of its unoccupied farming lands exceed in quantity those of any former years."

(24.) And these defendants submit that all and singular the matters and things mentioned in the said information are matters which might be tried and determined at law and are matters and things in which the said informant and the State of Michigan are not entitled to relief in a court of equity; and these defendants pray that they may have the same benefit of this defense as if they had demurred to this information.

Without this, that any other matter or thing in the said information contained and not herein and hereby well and sufficiently answered unto, confessed and avoided, traversed or denied, is true, to the knowledge and belief of these defendants; all which matters and things these defendants submit to the court, and humbly pray to be hence dismissed with their reasonable costs and charges in that behalf most wrongfully sustained.

FLINT & PERE MARQUETTE RAILROAD CO.,
By WM. L. WEBBER, *Gen. Solicitor.*
OLIVER PRESCOTT, *Trustee,*
By W. L. WEBBER, *His Solicitor.*
WM. W. CRAPO, *Trustee,*
By W. L. WEBBER, *His Solicitor.*
ALFRED W. NEWTON,
WM. L. WEBBER, *Solicitor for Defendants.*

STATE OF MICHIGAN, }
County of Saginaw, } ss:

On this fourteenth day of March, 1888, before me personally came William L. Webber and Alfred W. Newton, who, being by me duly sworn, severally depose and say that they have read the foregoing answer of the Flint & Pere Marquette Railroad Company and others and know the contents thereof, and that the same is true of their own knowledge, except as to those matters therein stated to be upon information and belief, and as to those matters they believe it to be true; and said William L. Webber further deposes and says that this verification is made by him for and on behalf of said defendants, Prescott and Crapo, for the reason that said Prescott and Crapo are non-residents of the State of Michigan, and said Webber has better personal knowledge of the facts than said defendants, Prescott and Crapo; and said Alfred W. Newton further

deposes and says that he is one of the defendants named in and who signed the said answer; and further deponents say not.

SAMUEL G. HIGGINS,
Notary Public in and for Saginaw County, Michigan.

Answer filed March 15, 1888.
Replication filed May 9, 1888.

* * * * * * *

Opinion.

STATE OF MICHIGAN:

Supreme Court.

THE STATE OF MICHIGAN *ex Rel.* ATTORNEY GENERAL
vs.
THE FLINT AND PERE MARQUETTE RAILROAD COMPANY *et al.*

The bill of complaint in this case, which is on the information of the attorney general, prays for an injunction to restrain the defendants, first, "from the sales of any of the lands described in said Exhibit A, or from selling any timber upon said lands, or committing any waste, either directly or by their agents, and from asserting and claiming any title to said lands and premises, and that the title of the State of Michigan in and to said lands, under and by virtue of the land grant of the Congress of the United States made September 28, 1850, may be decreed and declared to be full, complete, and absolute, which decree may stand and operate as a removal of all clouds to said title by reason of the claim or claims made by the said defendants or any of them, or other parties intrusted herein, by virtue of said railroad grant or trust deed, and that the said Flint & Pere Marquette Railroad Company, and its trustees and land commissioner, defendants herein, be required by the decree and order of this court to account to the State of Michigan for any and all timber cut upon said premises directly by said defendants, or by their agents or either, and that said complainant may have decree for any amount due it upon such an accounting." The State of Michigan claims title to the land described in Exhibit A under and by virtue of the grant usually known as the "swamp-land grant," of September 28, 1850, by the Congress of the United States. The defendants claim to have derived their title through an act of Congress passed on or about June 3, 1856, granting to the Flint & Pere Marquette Railroad Company certain lands in the State of Michigan to aid in the construction of a railroad in said State, and the act of the legislature of the State of Michigan passed February 14, 1857, conferring the lands upon said railroad company, subject to the act of Congress and to the act of the legislature referred to. The claims of the respective parties will appear in the abstracts of the bill and answer which are appended hereto, and are taken from the brief of the defendants and appellants.*

* See note at end of case.

Decree was entered in the court below for complainant, declaring the title to be in the State, that the cloud upon the title to the lands arising from the claim of the defendants be removed, and referring the cause to a commissioner to take evidence of State taxes paid by the defendants upon the lands, and the value of the timber cut therefrom. I deem it necessary to discuss and determine only the question of estoppel raised in this case, for if the complainant is estopped to now set up title in itself to the lands in controversy, the other questions become unimportant; that the State, as well as individuals, may be estopped by its acts, conduct, silence, and acquiescence is established by a line of well-adjudicated cases. In Massachusetts in the year 1825 the Commonwealth was held estopped from setting up alienage in a grantee to whom it had conveyed land. Com. *v.* Heirs of Andre, 3 Pick., 224. In that case the State had conveyed the land by deed to Andre. The court held: "This deed must operate as a rebutter, as it would if an individual were the grantor, and with more reason because the Commonwealth is not liable to an action. The Commonwealth, if the land were recovered, would feel itself bound to repay the consideration money with interest. This would be a claim which could not be resisted without degrading the country." It has been held that the United States Government was estopped from disputing certain boundary lines, and from denying that certain lands were within them. U. S. *v.* McLaughlin, 30 Fed. Rep., 147. The court in that case said: "A construction of the law and understanding of the facts, acted upon by all departments of the Government, by the public, and even by the claimant himself, for nearly a quarter of a century, should not now be disturbed; that the Government should be now estopped from alleging that it (the boundary line) is or should be located elsewhere. The law of estoppel, in a proper case, applies to the Government." In State *v.* Milk, 11 Fed. Rep., 389, it is said: "Resolute good faith should characterize the conduct of States in their dealings with individuals, and there is no reason in morals or law that will exempt them from the doctrine of estoppel." So also authorities there cited. Where the State granted its land as a part of a wagon-road grant, which had been conveyed to the State under the swamp-land act, it was held estopped to deny that the land was within the wagon-road grant, Cahn *v.* Barnes, 5 Fed. Rep., 326. In that case the State first granted the land to the plaintiff as wagon-road land, and subsequently conveyed it to the defendant as swamp land. The case of Hough *v.* Buchanan, 27 Fed. Rep., 328, arose under the swamp-land act, and the act of Congress granting certain lands to the State of Iowa to aid in the construction of railroads. That case is the exact parallel of this, so far as the indemnity lands are concerned. The complainants obtained their title from the railroad act, and the defendants claimed title under the swamp-land act. After reciting the facts the court said: "If under these circumstances it should now be held that the State is not debarred from asserting a claim to the lands under the swamp-land act, it is clear that a fraud would thereby be perpetrated upon the company and its grantees. Should it, however, be

held that it was open to the State or its grantees to contest the validity of the transfer to the railroad company, such contest must certainly be made within a reasonable time. The county, upon its organization in 1859, caused these lands to be listed as swamp lands, and the list was forwarded through the proper channels to the department at Washington. The Commissioner refused to certify the lands under the swamp-land act, holding as a matter of law that the certification made thereof in 1858 to the railway company defeated the right to claim them under the swamp-land act. It does not appear that the county or its grantees have since taken any further action in the premises. They knew that the lands had been certified to the railway company in 1858; that the Commissioner of the Land Office had refused to certify the lands under the swamp-land act; that the railway company and its grantees were claiming the land and asserting title thereto by paying taxes assessed thereon; and yet for 25 years the defendant and his grantors have done nothing to perfect the evidence of their title or to assert any right to the land. Certainly their claim must be regarded as stale and not entitled to favorable consideration at this late day.

In Pengra *v.* Munz, 29 Fed. Rep., 830, the question raised was similar to that in Cahn *v.* Barnes, *supra*, and the same rule was enunciated. In U. S. *v.* Railway Co., 37 Fed. Rep., 68, it is said: "Parties place faith and should place faith in the action of the Government and rely upon the title which its patent conveys, and when, as appears in this case, many parties have purchased in perfect reliance upon the title of the patent, and many years have passed with it unchallenged, common fairness requires that the title thus apparently conveyed should be sustained, unless it be very clear that there was a want of authority to issue it." In Attorney General *v.* Ruggles, 59 Mich., 124; 26 N. W. Rep., 419, the State asked for the cancellation of certain certificates for the purchase of agricultural-college lands. There, as here, counsel for the State sought to make a distinction in the doctrine of estoppel as applied to the State and individuals. But this court, speaking through Mr. Justice Morse, said: "I see no reason to distinguish this case, although the State is a party, from like cases between individuals."

This brings us to a statement of the facts applicable to this branch of the case. By the act of Congress of June 3, 1856, certain alternate sections of the public lands were granted to this State to aid in the construction of certain railroads. The State, through its legislature, by act No. 126, laws 1857, accepted the grant and provided the ways and means to carry out the trust thereby reposed in the State. Certain citizens of this State and, I presume, some from other States organized the Flint & Pere Marquette Railway Company and under the authority conferred upon it by the State immediately commenced and prosecuted its work to completion. The territory through which the road was constructed was practically a wilderness. It is evident that it could not then have been built without this grant of lands. As an additional inducement the State agreed to exempt the lands from taxation for a certain number of years and gave the railroad the right of

way over its own lands. The company in all respects complied with the law, and as each 20 miles of its road was completed it was inspected by the proper State officials, and the fact certified to the United States Government. It then became entitled to the odd-numbered sections corresponding to each 20 miles so constructed. If the Federal Government had sold or conveyed any of the lands in these odd-numbered sections so granted, the company was entitled to a corresponding amount from other lands within certain indemnity limits. These lands were to be selected and designated by an agent appointed by the State. The lands within the six-mile limits were to be identified by the Secretary of the Interior. The grant was a "float." No patents were necessary to convey the title, but the title passed as soon as the lands were identified and certified. The lands in controversy in this suit, in all about 16,000 acres, were selected, identified, and certified in the years 1859 and 1860 as having been granted to the State under the railroad act of June 3, 1856. These certificates were sent to the State by the Department of the Interior, and filed in its appropriate department. From that time to the time of filing the bill in this cause in December, 1887, the State never called in question the right of the railroad company to these lands. Meanwhile three-fourths of the lands have been sold and conveyed by the company to the innocent purchasers. These lands have been improved, buildings erected, and taxes paid, both State and municipal, for many years. The railroad's claim of ownership was open and notorious. In 1871 the legislature discussed the question of taxing them, and the company then entered its protest. In 1873 the legislature enacted a law taxing them. The auditor general, acting under the law, obtained from the General Land Office, at Washington, early in 1873 a list of these lands for the purpose of subjecting them to taxation. The State furnished to the various county treasurers lists of the lands within their respective counties, and they have been taxed continuously since for both State and municipal purposes. Aud. Gen. Rep., 1874. The company contested this in the United States courts, and carried the case to the court of last resort, where the right to tax them was affirmed. Tucker *v.* Ferguson, 22 Wall., 527. The company issued bonds to obtain money to construct the road and executed a trust mortgage to secure their payment. The auditor general, in his report for 1873, included the opinion of the United States circuit court for the western district of Michigan in the above case; also his letter to the Commissioner of the General Land Office, at Washington, asking for lists of railroad lands subject to taxation by the act of the legislature, stating the receipt of certain lists under date of October 13, 1873, and reported the number of acres of land belonging to the defendant company and subject to taxation to be 512,506.12. See Report, pp. xvi–xxi. In his report for 1874 he includes the opinion of the Supreme Court of the United States in the same case, and says: "Lists were received entitled as below, and giving the descriptions of lands certified or patented to the several railroad companies and of the number of acres stated as follows:" * * * Among the lists so re-

ceived are 11 of the lands of the defendant company, aggregating 446,814.11 acres. Pages clxx–clxxvi. In 1870 the company applied to the commissioner of the State land office for an examination and certification whether the State laid claim to any of these lands, at the same time presenting to him a plat book and requesting him to delineate thereon all swamp lands patented to the State and all unpatented and all claimed by the State on the odd-numbered sections. The commissioner made his examination and certificater showing that none of the lands were claimed by the State.

The identification of these lands and their certification to the State were a solemn declaration on the part of the United States that they came to the State under the railroad grant and not under the swamp-land grant. This declaration stood for 28 years without challenge from the State and with the evidence thereof on file in its own department. It knew that the railroad company took these lands under the railroad act and was selling and conveying them to hundreds of its citizens for farms and other purposes, and yet it slept upon its rights until it has reaped the benefits of the construction of the railroad, and the available public lands have in all probability been exhausted, so that the company cannot now receive the compensation it was entitled to under the acts of Congress and the State and until these lands have been enhanced many times in value at the expense of the defendant company and its grantees.

No question is raised as to the good faith on the part of the railroad company and its officers, nor is it hinted that there was any collusion between the officers of the State and those of the railroad company. Whatever may have been the effect of the arrangement made between the General Government and the State in regard to identification of lands under the swamp-land act, it was certainly understood between the two Governments that patents should be issued to the State as fast as the lands were identified, and the commissioner of the State land office, in his report of December 1, 1860, reported that 5,049,125.44 acres had been patented, leaving unpatented and unadjusted 808,336.61 acres. The lands now involved were not patented. The swamp-land act did not identify the land granted. Assuming that the original surveys, which in many cases were undoubtedly fraudulent, rather than the resurveys, should govern under the arrangement made between the two Governments, the record in this case shows that the field-notes of these surveys were contained in several hundred small pass books turned over to the State land office by the surveyor general. The complainant, therefore, had in its possession the evidences of its title. It is urged by counsel for the State that none of its officers or agents examined or knew of the contents of these field-notes, and that this constitutes a legal excuse for not applying to it the doctrine of estoppel. The State, therefore, seeks to apply the doctrine of estoppel to the railroad company and its grantees, but denies that it is applicable to itself. What reason can be found for such a position? Let us apply the case to individuals. Should A, assuming to own large

tracts of land, convey certain of them to B in trust to be conveyed to C upon the payment of a valuable consideration, which, when paid, will in inure to the benefit of B as well as of C; the consideration is paid; the lands conveyed; B, under the power he possesses, imposes annual burdens upon these lands for 15 years, which C pays; B sleeps for 28 years upon his rights in ignorance that the title at the time of the conveyance to C was in him, and C has meanwhile openly and notoriously asserted his title and dealt with the lands as his own, has mortgaged, sold, and conveyed them, and all this while the evidence of title is in the possession of B, would not B be estopped to assert his title? It is said in U. S. *v.* Military Road Co., 41 Fed. Rep., 493, "Whatever is inequitable as between man and man in their dealings with each other should also be deemed inequitable as between the United States and those with whom they condescend to deal under like circumstances."

Applying the principles of the above cases and others that might be cited to the present case, I can find no escape from the conclusion that the claim of the complainant has become stale, and that it is now estopped to assert title in itself. The claim of the State has no foundation in equity, justice, or good conscience. The maxim that "where one of two parties, neither of whom has acted dishonestly, must suffer, he shall suffer who, by his own act, has occasioned the confidence and consequent injury of the other" applies to the present case, in which Mr. Sleeper, the deputy commissioner of the State land office, testifies that it required the labor of three years to examine the records in that office and collate the evidence upon which he now bases the claim of the State. The decree of the court below must be reversed and the bill dismissed with costs of both courts.

C. B. GRANT.
JOHN W. McGRATH.
JOHN W. CHAMPLIN.
ALLEN B. MORSE.
CHAS. D. LONG.

Note.

The following is an abstract of bill and answer referred to in opinion:

The bill avers the passage of the swamp-land law of September 28, 1850, which, it is said, "granted unto the several States named in the act passed at said date, including the State of Michigan, the whole of the swamp and overflowed lands made unfit for cultivation and remaining unsold on or after the 28th day of September, A. D. 1850, for the purpose of constructing the necessary levees and drains to reclaim the swamp and overflowed lands therein." The bill then avers that it was the duty of the Secretary of the Interior to make lists and plats of such lands, and, at the request of the governors of the said several States, to issue patents to the said States, and that after making up the lists and plats all legal subdivisions, the greater part whereof was wet and unfit for cultivation, were to be

included in said lists and plats, and alleges that the effect of the grant was to vest title in the State to "all of the swamp and overflowed lands located therein and of the kind and character designated in said act," and states that the State afterwards asserted title to all such lands, and that such title was recognized by the United States. The bill then shows that the method of listing, designating, and describing said land was a matter of correspondence between the Federal and State officers; that on or about November 21, 1850, certain instructions were prepared as to the method of identification by the Commissioner of the General Land Office, of which a copy was sent to the surveyor general and another copy to the governor (and the bill quotes from said instructions), by which the surveyor was instructed to make out a list, and was authorized to look at the field-notes as a basis of the list if the State would consent; also authorized him to act upon other satisfactory evidence as to the character of the lands which the State might furnish. The bill also quotes from the letter of November 21, 1850, to the governor of Michigan from the Commissioner of the General Land Office, suggesting inquiries as to the method of determining the character of the lands. The bill next quotes from a letter of the surveyor general of the United States to the governor of Michigan, and, referring to the instructions, the surveyor general asks the governor to inform him whether the State authorities are willing to adopt the field-notes or whether the State authorities will have a survey made to identify the lands. The bill then sets out that Gov. Barry wrote, suggesting delay, and that on January 3, 1851, the surveyor general wrote to the governor, giving his opinion that the field-notes would show a greater amount of swamp lands than could be found from a resurvey, and that the net proceeds to the State would be greater, and adds: "These lands are to be designated, all of them, from the notes of the surveyors in this office, unless the State authorities choose to survey."

The bill further states, on belief, that the survey, to which reference is made in the instructions and letters, had indicated the sections or subdivisions of sections of Government lands "which were of a swampy character and come within the lands conveyed by said grant of September 28, A. D. 1850;" that pursuant to the propositions and suggestions aforesaid the legislature of the State of Michigan, in 1851, at the suggestion of the governor, took the same into consideration, and that by the act of June 28, 1851, the State adopted the notes of the surveyor on file in the surveyor general's office as a basis upon which the State should receive the lands; that such legislation was known at the Land Department at Washington and understood to be the basis agreed upon for the adjustment of the lands granted by said grant. The bill then avers that this proposition and these acceptances by the State "operated and had the legal effect to perfect in the State of Michigan full, complete, and absolute title to all the lands shown by the surveyor general's minutes to be swamp and overflowed lands and all subdivisions of lands, the greater part of which appeared by said minutes to be of a swampy nature;" that the surveyor general thereupon proceeded

to prepare plats and designate upon said plats by lines the lands that were of a swampy nature and character which came within the grant, and that these marks used to designate the several pieces are made in ink, and that within such lines is written the letter "S," to indicate that such lands are swamp lands; that pursuant to directions from Washington the surveyor general did make maps and plats, which are now on file at Lansing, "and which were and are the identification of the swamp lands granted to the State of Michigan by said act, and which this informant submits are effective and binding both upon the United States and all persons claiming from them, as well as the State of Michigan;" charges that from June 28, 1851, to the present time the State has always treated the surveyor general's minutes, maps, and plats of the swamp lands placed thereon as binding upon the State and "as fixing and determining the lands belonging to the State of Michigan" under said grant, and that the Federal Land Department "have at all times been fully advised as to the act of the legislature of the State of Michigan in 1851 and of the claims made by said State by reason thereof;" that the act of Michigan, June 28, 1851, and the lists prepared by the surveyor general were reported to the General Land Office, and that the proposal of the Commissioner of the General Land Office as to the method of identification of said lands was approved by the Secretary of the Interior; that by such facts "the title of the State was and is and has been at all times full and complete" since the grant.

Shows that the claim of the State of Michigan as to the method of identifying these lands has never been repudiated by the Department of the Interior, and the preparation of the lists has been neglected by the Government officials at Washington; that some of said lands have been patented to the State; as to others, lists have been prepared and certified to the State; as to others, lists have been prepared and not certified to the State; as to still other descriptions, no lists whatever have been prepared, although the Federal Land Office has been frequently requested to certify and patent said lands to the State; charges that Exhibit A, annexed to the information, contains a list of a part of "the swamp and overflowed lands" which were granted to the State by said act and "which are shown to be swamp and overflowed lands, as this informant alleges, by the surveyor general's minutes and the plats and maps prepared by him and filed in the office of the land commissioner for the State of Michigan, and the title to which is now in the State of Michigan by virtue of said grant and acceptance as aforesaid, and which said lands, your informant alleges, are swamp and overflowed lands within the true intent and meaning of said grant;" alleges that June 3, 1856, Congress granted lands to Michigan to aid in the construction of railroads therein, and that the legislature of Michigan, by the act of February 14, 1857, conferred upon the Flint & Pere Marquette Railway Company said lands, franchises, powers, and privileges to aid in the construction of its railroad; that thereafter the Flint & Pere Marquette Railway Company went into the hands of a receiver and was subsequently reorganized as

the Flint & Pere Marquette Railroad Company, "which company took all the lands, rights, and interests therein held by the Flint & Pere Marquette Railway Company and still holds and claims to own the said lands;" states that "the Flint & Pere Marquette Railroad Company appointed an agent to select lands under said act of Congress, as well as that of the legislature of the State of Michigan, above referred to, and induced the Commissioner of the General Land Office to certify the same to the said Flint & Pere Marquette Railroad Company, including the lands set forth and described in Exhibit A, hereto attached, which lists are filed in the office of the State land commissioner, at Lansing, and contains the following proviso: 'Subject to all its conditions (that is, the conditions of said grant) or to any valid interfering rights which may exist or any of the terms imposed in the foregoing lists,'" referring to the lists of lands certified to the Flint & Pere Marquette Railroad Company; states that the lands in Exhibit A have been certified to the Flint & Pere Marquette Railroad Company, but the bill cannot state to what extent or what part of said lands have been patented to the Flint & Pere Marquette Railroad Company; shows that the Flint & Pere Marquette Railroad Company was a corporation under the laws of Michigan; that "the said Flint & Pere Marquette Railroad Company conveyed all of its interests in said lands" to Prescott and Crapo, as trustees, to secure bonds; that the names of the bondholders are numerous and cannot make them defendants; that the amount of the bonded indebtedness cannot be stated; that A. W. Newton had authority from the trustees to dispose of the lands and is offering the same for sale; that the lands in Exhibit A are worth $50,000 and upwards and have timber of value; that by virtue of the railroad grant and authority thereunder timber has been cut on said lands; that said lands are unoccupied and are not used for right of way or depot buildings or grounds, "but still are the property of the State of Michigan, vested in it by the grant of 1850 and the acceptance of the same by the legislature of the State of Michigan as aforesaid;" that the timber being cut is valuble and the timber uncut is of great value; that the only claim of said defendants to said land is under the railroad land grant of February 14, 1857, and the certification of such lands by the officers of the Interior Department of the United States, and that inasmuch as the grant of said lands described as aforesaid in Exhibit A and the identification of the same was made prior to the grant to the State of Michigan for the construction of a railroad from Pere Marquette to Flint, Mich., and thence to Port Huron, Mich., and the title of the State of Michigan was full and complete prior to the conferring, or any attempt to confer, the said lands upon the said Flint & Pere Marquette Railway Company or its successors, and its several trustees took and hold neither a legal -or equitable claim to said lands, and the claim of the defendants rests upon certain acts of the officials of the General Government which constitute a cloud upon the title of the State of Michigan, therefore the bill alleges that neither the defendant company, nor the predecessor

company, nor the trustees had any title to the land; is advised that parcels of land have been disposed of by contract or deed to persons whose names and residences are not known, and whom he asks "leave to make parties to these proceedings when he shall be able to discover that there are such parties who have claims to any part or portions of said lands."

States that the agent of the said Flint & Pere Marquette Railroad Company, and so in effect the company, had notice at the time these lands were listed that the "same were shown by the minutes of the survey made by the surveyor general of the United States for the State of Michigan to be swamp lands of that kind and character granted to the State of Michigan by the act of 1850, and notwithstanding such knowledge he caused the same to be listed as railroad lands and kept the knowledge of the true character of the lands from the State board of control of railroads for the State of Michigan;" states that application has been made to the Federal Land Department to have the claim of the railroad company cancelled, and that the Federal department declined to take any action therein; charges that the action taken by the agents of the defendant and the predecessor company "*are* fraudulent as against the State of Michigan, and operated to impair its title to said lands and prevent the State from disposing of the same to actual settlers;" "alleges that the State has no full and complete remedy except in a court of equity, and that in order to protect the title of the State and free the same from cloud and prevent sales of said land and further sales of timber thereon and irreparable injury to the State it becomes and is necessary for the court of equity to interfere, and asks that the defendants answer the bill without oath, and that the defendants be enjoined from the sale of any of the lands described in said Exhibit A or from selling any timber upon said lands, and that the title of the State may be confirmed, and that the defendants be required to account for all timber cut under their authority.

Defendants' answer sets out, first, that the defendant corporation does not and never has claimed ownership in any of the lands other than its station grounds and depot buildings and has no power or authority over the same, except to call the trustees to an account for the proceeds; denies that the State of Michigan has any power or control over the lands or any of them. Defendant Newton states that he has no power or control over the land, except as conferred by the trustees. Defendants Prescott and Crapo state that they, as trustees, are the owners of the land, except so far as they had been previously disposed of and except one parcel which was never claimed as within the railroad grant; that their title is derived under the act of Congress of June 3, 1856, and the act of the legislature of the State of Michigan of February 14, 1857, and sundry subsequent conveyances. The trustees say they admit the act of September 28, 1850, and that it became the duty of the Secretary of the Interior to identify the lands, but they deny that the effect of the grant was, as stated in the information, to vest title in the State prior to iden-

tification, and deny that the fee-simple title passed prior to patent, and deny the claim of the State; admits that methods for identifying particular descriptions to pass to the State under the swamp-land act were proposed and that the State passed the act of June 28, 1851; denies that, if correspondence did take place between the Federal and State officers, as stated in the bill, it "could have effect to increase the rights of the State of Michigan beyond the terms of the act of Congress granting said lands." The trustees answer further concerning the survey of public lands and the instructions and regulations and refer to them as public documents, but deny that any arrangement between the Land Commissioner of the United States and the State could perfect in the State of Michigan complete title to the lands shown by the surveyor general's minutes to be swamp and overflowed prior to confirmation by the issue of patent. The trustees further say that it was a matter of common knowledge that many of the surveys in Michigan were false and fraudulent and the field-notes unreliable, the surveys never in fact having been made in accordance with the said field-notes, and the maps drawn from said field-notes were purely fictitious; that the false and fraudulent surveys were rejected and new surveys were made; that since that time it has always been the practice to regard the field-notes of said resurvey as the proper and only field-notes having recognized authority, and that the same were adopted and accepted, both by the State of Michigan and the United States, to be in lieu of and as abrogating the previous false and fraudulent surveys, field-notes, maps, and plats.

Defendants deny that lands which were not in fact swamp and overflowed lands and which were shown by said false and fraudulent surveys to be swamp and overflowed lands passed to the State; avers that the resurveys made pursuant to the authority of Congress and the field-notes of the resurveys were the notes of the surveys to which the arrangement of identifying the lands referred, and that such have ever since been so regarded, both by the State and Federal government. Defendants deny that it was competent for any of the officers of the Federal or State government to transfer the title from the United States to the State unless the lands were in fact of the character described in said act, and they deny that the act itself operated to convey any present right to any of the lands except such as were of the character specified in said act of Congress; states that, being deceived by the false and fraudulent surveys, the Secretary of the Interior did approve and patents were issued to the State of Michigan for very many thousands of acres of land which were not in fact swamp and overflowed lands, unfit for cultivation. Defendants aver that more than 50 per cent. of said lands were not of the character contemplated by said act and which the State has received without right. As to the third clause of the information, defendants say it is vague, uncertain, and insufficient in its averments; denies that the State of Michigan, for a period of 30 years since said grant, has claimed or assumed to claim any of the lands in Schedule A described, with the exception of the fractional lot hereinbefore disclaimed, and denies that the lands in said

Schedule A annexed to said information are in fact swamp and overflowed lands and of the character specified in said grant.

The trustees admit that June 3, 1856, Congress passed the act granting lands to Michigan to aid in the construction of railroads, and that February 14, 1857, the legislature of Michigan conferred upon the Flint & Pere Marquette Railway Company the lands to aid in the construction of the road; states that thereafter the Flint & Pere Marquette Railway Company went into the hands of a receiver; that another corporation was organized under the general laws of Michigan known as the Flint & Pere Marquette Railroad Company; den*ies* that the latter took title in the lands formerly held by the former corporation; den*ies* that it still holds or claims to hold the same; admit*s* that an agent was to be appointed by the governor of the State to select the indemnity lands; admit*s* that the lands in Exhibit A, excepting the lot disclaimed, have been certified by the Secretary of the Interior and the Commissioner of the General Land Office to the State as lands identified as being within the act of June 3, 1856, for the benefit of the Flint & Pere Marquette Railway Company; state*s* that no patents have been issued under the grant of June 3, 1856, but the title passed by statute; that the identification was made complete by the certification of the Federal Land Office; state*s* that the Flint & Pere Marquette Railroad Company is a corporation, and that the Flint & Pere Marquette Railway Company, before the defendant railroad company had existence, had conveyed its lands to trustees; admit*s* the value of the lands; admit*s* that there is valuable timber upon the same, and that some of the timber has been cut off; state*s* that the greater portion of the lands in Exhibit A have been offered for sale for more than 20 years, and that less than one-fifth of the acreage described in said exhibit remains unsold; that many of the parcels have been sold and occupied for more than 15 years, and the title of the purchasers has never been questioned until the filing of this information; den*ies* that the lands are all unocupied; den*ies* that the States had title to any of these lands under the swamp-land act, but state*s* its effect to be that the State took title under the railroad grant, and that that title passed to the railway company. Defendants claim that the certification of said lands under the railroad grant was of itself an adjudication that the lands were not of the character described in the swamp-land act of 1850, and was "a conclusive adjudication that said lands were included with said railroad grant of 1856;" state*s* that there is no valuable timber upon the lands unsold; state*s* that the lands are valuable mainly for agricultural purposes and that the trustees desire to sell them; den*ies* that the agent of the former corporation, the Flint & Pere Marquette Railway Company, and so the company at any time had knowledge that the same were shown to be swamp land, and that he kept that knowledge from the board of control of railroads; den*ies* that a court of equity is a proper tribunal to try this question; state*s* that the letter "S" was not put by the surveyor general upon the maps so made from the field-notes to indicate that they were swamp lands, but state*s* that it was put there without authority and has no

legal force or effect as indicating the character of the land upon which it was placed; that it was the policy of the Federal and State governments to promote settlement and development of the country. To the end that no conflict may arise the State passed the act of February 14, 1853, to confirm titles to purchasers, and to the same end Congress passed the acts of March 2, 1855, and March 3, 1857, and that no such legislation ever took the lands away from the State or from the Federal government, and that the question of adjusting these several questions belongs to and should be settled between themselves; avers that the claim now put forward by and in behalf of the State was never authorized by the legislature; avers that if the State became the owner, as specified in the bill, so much time has elapsed that the State is prohibited by law, by the statute of limitations, from bringing any suit for the recovery of the lands and claims the benefit of the statute of limitations to quiet title; states provisions of law for collection of taxes upon these lands as railroad lands; states that these lands in 1859 and 1860 were certified to the State of Michigan under the railroad grant, so the State had notice that these were railroad lands. The State of Michigan employed a trespass agent to look after the railroad lands and collect sums of money for trespass thereon. Defendants claim that the State was estopped because application was made in 1870 to the commissioner of the State land office to know if any of these lands were claimed, and no such were then claimed; submits that all matters in controversy could be determined at law and claims the benefit of a demurrer.

At a session of the supreme court of the State of Michigan, held at the supreme court room, in the capitol, in the city of Lansing, on the twenty-third day of December, in the year of our Lord one thousand eight hundred and ninety-one—

Present: The Honorable John W. Champlin, chief justice; Allen B. Morse, John W. McGrath, Charles D. Long, Claudius B. Grant, associate justices.

THE STATE OF MICHIGAN *ex Rel.* ATTORNEY GENERAL, Complainant,
vs.
THE FLINT AND PERE MARQUETTE RAILROAD COMPANY, OLIVER Prescott, William W. Crapo, and Alfred M. Newton, Defendants and Appellants.

This cause having been brought to this court by appeal from the circuit court for the county of Ingham, in chancery, and having been argued by counsel and due deliberation had thereon, it is now ordered, adjudged, and decreed by the court that the decree of the circuit court for the county of Ingham, in chancery, be, and the same is hereby, reversed, vacated, and held for naught and the bill of complaint dismissed; and it is further ordered, adjudged, and decreed that the defendants do recover of and from the complainant their costs of both courts to be taxed.

* * * * * * *

Supreme Court U. S.
FILED.
JAN 8 1894
JAMES H. McKENNEY,
CLERK.

CASE No. 15,289.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM No. 913.

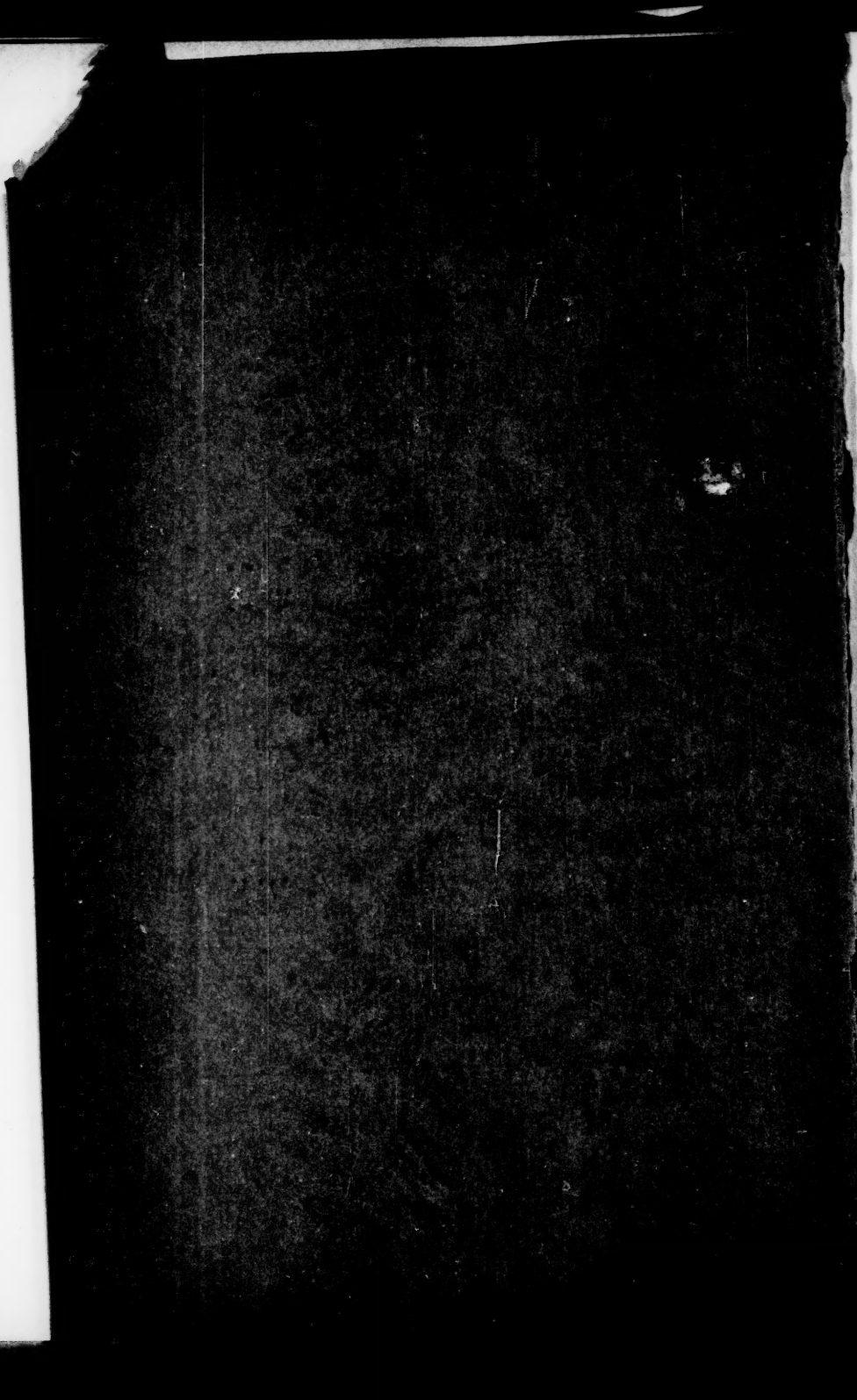
THE STATE OF MICHIGAN, EX REL THE ATTORNEY-GENERAL, PLAINTIFF IN ERROR,

vs.

THE FLINT & PERE MARQUETTE RAILROAD COMPANY, WILLIAM W. CRAPO, TRUSTEE, AND ALFRED W. NEWTON, DEFENDANTS IN ERROR.

MOTION OF DEFENDANTS IN ERROR TO DISMISS THE APPEAL TAKEN IN SAID CAUSE, AND BRIEF IN SUPPORT THEREOF.

W. L. WEBBER,
Attorney for Defendants in Error.



In the Supreme Court of the United States.

OCTOBER TERM, 1893. No. 913.

THE STATE OF MICHIGAN,
ex rel The Attorney-General,
Plaintiff in Error,

vs.

THE FLINT & PERE MARQUETTE RAILROAD COMPANY,
WILLIAM W. CRAPO, Trustee, and
ALFRED W. NEWTON,
Defendants in Error.

Now come the said defendants in error by W. L. Webber, their attorney, and move the Court to dismiss the appeal in the above entitled cause, with costs, for want of jurisdiction. The judgment and decree from which the appeal was taken is the judgment and decree of the Supreme Court of the State of Michigan, one of the United States, and the judgment and decree complained of by the appellant, plaintiff in error, does not involve any question necessarily arising under the constitution of the United States, or the laws and treaties made in pursuance thereof. Nor was the said decision of the Supreme Court of the State of Michigan, in said cause, against any title, right, privilege, or immunity specially set up or claimed by either party under the constitution of the United States, or under any treaty, statute, commission or authority thereof, nor was any Federal question decided by the Supreme Court of Michigan in said case.

W. L. WEBBER,
Attorney for Defendants in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1893. NO. 913.

THE STATE OF MICHIGAN,
ex rel The Attorney-General,
Plaintiff in Error,

vs.

THE FLINT & PERE MARQUETTE RAILROAD COMPANY,
WILLIAM W. CRAPO, Trustee, and
ALFRED W. NEWTON,
Defendants in Error.

Brief for defendants in error and appellees on motion to dismiss the appeal taken in said cause for want of jurisdiction.

The information or bill states the passage of the Swamp Land Act by Congress, September 28th, 1850, and that said grant transferred to the several States named, and, among others, the State of Michigan, the whole of the swamp and overflowed land made unfit for cultivation and remaining unsold on the 20th day of September, A. D. 1850; and states further that it was the duty of the Secretary of the Interior to make lists and plats of said land, and at the request of the Governor of the State to issue patents. States that the effect of the grant was to vest title in the State to the lands, and that the State afterwards asserted title to all such lands, and that such title was recognized by the United States.

The bill states further that the method of listing, designating, and describing said lands was a matter of correspondence between the Federal and State officers, and that on November 21st, 1850, certain instructions were prepared as to the method of identification by the Commissioner of the General Land Office, of which a copy was sent to the Surveyor-General and another copy to the Governor, by which the Surveyor-General was instructed to make out a list, and was authorized to look at the field notes as a basis of the list if the State would consent. Recites further that the Surveyor was authorized to act upon other satisfactory evidence as to the character of the lands which the State might furnish. States that the Surveyor-General of the United States referred his instructions to the Governor of Michigan, and a desire to be informed whether the State authorities would accept the field notes or whether the State would prefer a survey to identify the lands.

The bill states further that the Governor suggested delay; that on January 3rd, 1851, the Surveyor-General gave his opinion that the field notes would show a greater amount of swamp lands than the re-survey.

The bill further states that the survey spoken of indicated the sections or subdivision of sections of government lands which were of a swampy character, and that pursuant to the proposition and suggestions aforesaid the Legislature of Michigan in 1851, at the suggestion of the Governor, passed the Act approved June 28th, 1851, adopting the notes of the Surveyor on file in the office of the Surveyor-General, as a basis upon which the State would receive the lands, and that such legislation was well known to the Land Department in Washington, and understood to be the basis agreed upon for the adjustment of the lands granted by said grant.

The bill further states that this proposition and these acceptances by the State "operated and had the legal effect to perfect in the State of Michigan full, complete and absolute title to all the lands shown by the Surveyor-General's minutes to be swamp and overflowed lands, and all sub-divisions of land the greater part of which appeared by said minutes to be of a swampy nature."

States that the Surveyor-General thereupon proceeded to prepare plats, and designate upon said plats the swampy and wet lands which came within the grant; that the maps and plats are now on file at Lansing, and are the identification of the swamp lands granted to the State of Michigan by the said Act, and "which this informant submits are effective and binding both upon the United States and all persons claiming from them, as well as the State of Michigan."

The bill then states that the title of the State of Michigan having been perfected in this manner, afterwards Congress, by Act of June 3rd, 1856, granted lands to Michigan to aid in the construction of certain railroads, and, among others, the Flint & Pere Marquette Railroad, and that a large quantity of the lands selected by the railroad company were lands which were shown by the minutes of the Surveyor-General, to be swamp.

There is no statement in the bill that the lands in question were designated by the Secretary of the Interior as swampy, or that patents from the United States to the State were issued for these lands or any of them. The claim of the State is ~~raised~~ based upon the assertion that the notes of the surveys on file showing the lands to be swamp under the agreement set up became vested in the State as swamp lands, and that by the means particularly detailed in the bill these lands became diverted from the Swamp Land Grant, and passed to the railroad company as railroad lands, and the bill prays that these lands may be declared to be swamp lands, and that the railroad company has no right in them, and that the title of the State be confirmed, and that the defendants be required to account for lands and timber sold, and prays for an injuntion to prevent further sales.

ANSWER.—(*Note.*—Defendant Prescott died after the bill was filed, and his death was suggested of record and the cause was discontinued as to him in the State Court. In copying papers his name has been used more or less in the record, but Crapo, as surviving trustee, took full title formerly held by both Prescott and Crapo.)

The answer denies that the State of Michigan has any power or control over the lands or any of them. It states that the trustees held the title for the railroad company; that this title to these lands came from the United States through the State of Michigan by the Act of the Legislature of Michigan of February 14th, 1857, and sundry subsequent conveyances.

Denies that the effect of the grant was, as stated in the information, to vest title in the State prior to identification.

Denies that the correspondence spoken of in the bill could have the effect to increase the rights of the State of Michigan beyond the terms of the Act of Congress granting said lands.

States that it was a matter of common knowledge that many of the surveys in Michigan were false and fraudulent, in many cases surveys not having been made in the field at all, but the field notes and maps which were returned being wholly false and fictitious. In consequence re-surveys were made pursuant to the authority of Congress; that Congress made appropriations for that purpose, and that the notes of the re-survey, and the maps of the re-survey became the notes of the survey; that the Federal authorities and the State authorities accepted the re-surveys as the only valid surveys, and had acted upon these re-surveys as such from that time until the filing of this bill.

Denies that any of the lands mentioned and referred to in the schedule of the bill were in fact swamp or overflowed lands within the meaning of the Act of Congress.

States that there had been a reorganization of the Flint & Pere Marquette Railroad Company, and that a new corporation had been organized to take the title of the original company.

States that all the lands in the exhibit mentioned have been certified by the Secretary of the Interior and the Commissioner-General of the Land Office to the State of Michigan as lands identified as being within the Act of June 3rd, 1856, for the benefit of the Flint & Pere Marquette Railroad Company.

States that no patents were issued under the grant of June 3d, 1856, to the railroad company, but the title passed by statute, which title was made complete by the identification and certification of the United States Land Office at Washington.

The answer further states that the greater portion of these lands had been offered for sale for more than twenty years, and more than four-fifths of the lands described in the exhibit have been in fact sold, and that many of the parcels had been occupied by purchsers for more than fifteen years, and that the title of these purchasers had never been questioned until the filing of this information.

The answer claims that the certification of the lands under the

The bill states further that the Governor suggested delay; that on January 3rd, 1851, the Surveyor-General gave his opinion that the field notes would show a greater amount of swamp lands than the re-survey.

The bill further states that the survey spoken of indicated the sections or subdivision of sections of government lands which were of a swampy character, and that pursuant to the proposition and suggestions aforesaid the Legislature of Michigan in 1851, at the suggestion of the Governor, passed the Act approved June 28th, 1851, adopting the notes of the Surveyor on file in the office of the Surveyor-General, as a basis upon which the State would receive the lands, and that such legislation was well known to the Land Department in Washington, and understood to be the basis agreed upon for the adjustment of the lands granted by said grant.

The bill further states that this proposition and these acceptances by the State "operated and had the legal effect to perfect in the State of Michigan full, complete and absolute title to all the lands shown by the Surveyor-General's minutes to be swamp and overflowed lands, and all sub-divisions of land the greater part of which appeared by said minutes to be of a swampy nature."

States that the Surveyor-General thereupon proceeded to prepare plats, and designate upon said plats the swampy and wet lands which came within the grant; that the maps and plats are now on file at Lansing, and are the identification of the swamp lands granted to the State of Michigan by the said Act, and "which this informant submits are effective and binding both upon the United States and all persons claiming from them, as well as the State of Michigan."

The bill then states that the title of the State of Michigan having been perfected in this manner, afterwards Congress, by Act of June 3rd, 1856, granted lands to Michigan to aid in the construction of certain railroads, and, among others, the Flint & Pere Marquette Railroad, and that a large quantity of the lands selected by the railroad company were lands which were shown by the minutes of the Surveyor-General, to be swamp.

There is no statement in the bill that the lands in question were designated by the Secretary of the Interior as swampy, or that patents from the United States to the State were issued for these lands or any of them. The claim of the State is ~~raised~~ based upon the assertion that the notes of the surveys on file showing the lands to be swamp under the agreement set up became vested in the State as swamp lands, and that by the means particularly detailed in the bill these lands became diverted from the Swamp Land Grant, and passed to the railroad company as railroad lands, and the bill prays that these lands may be declared to be swamp lands, and that the railroad company has no right in them, and that the title of the State be confirmed, and that the defendants be required to account for lands and timber sold, and prays for an injuntion to prevent further sales.

ANSWER.—(*Note.*—Defendant Prescott died after the bill was filed, and his death was suggested of record and the cause was discontinued as to him in the State Court. In copying papers his name has been used more or less in the record, but Crapo, as surviving trustee, took full title formerly held by both Prescott and Crapo.)

The answer denies that the State of Michigan has any power or control over the lands or any of them. It states that the trustees held the title for the railroad company; that this title to these lands came from the United States through the State of Michigan by the Act of the Legislature of Michigan of February 14th, 1857, and sundry subsequent conveyances.

Denies that the effect of the grant was, as stated in the information, to vest title in the State prior to identification.

Denies that the correspondence spoken of in the bill could have the effect to increase the rights of the State of Michigan beyond the terms of the Act of Congress granting said lands.

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The answer claims that the certification of the lands under the

railroad grant was, itself, an adjudication by the Secretary of the Interior that the lands were not of the character described in the Swamp Land Act of 1850, and was conclusive adjudication that said lands were included within the railroad grant of 1856.

The answer further states that if the State did become the owner, as specified in the bill, so much time has elapsed that the State is prohibited by law, by its own statute of limitations, from bringing any suit for the recovery of the land.

States that the claim of the State is a "stale" one, and that so much time has elapsed, and other rights have become so involved by the issue of bonds by the railroad company secured upon these lands, and by the sale of so large a portion of the lands to parties who bought in good faith, that the State should be held estopped from now raising the question.

Further to show that the State should be estopped it states that the State of Michigan has, by virtue of special acts of its Legislature, caused lists to be made of these lands, and sent to the assessing officers, and that for many years, under the authority of the State of Michigan, these lands have been specially assessed as railroad lands, and the railroad company has paid many thousands of dollars for taxes imposed upon these lands under the acts of the Legislature aforesaid.

The answer states further, that application was made in 1870 to the Commissioner of the State Land Office to know whether any of these lands were claimed by the State as swamp lands, and was then advised by the Commissioner of the State Land Office that the State did not lay any claim to any of the lands in question.

So the answer claims that by reason of the facts set up the State should be held estopped from prosecuting this suit or making this claim.

STATEMENT.

Proofs were taken and the case was heard first in the Circuit Court of the County of Mason, in Michigan, where a decree passed in favor of the State, from which an appeal was taken to the Supreme Court of the State of Michigan, where the case was heard and argued fully upon its merits, and the Supreme Court of the State of Michigan, by its opinion, found in the extract from the record printed for this motion, pages 31 to 36, reversed the finding of the lower court, and dismissed the bill with costs. The opinion of the Supreme Court of Michigan referred to states the question involved, and decides the case solely upon the question of estoppel. In the opinion, commencing on page 32 of the extract from record, the Court says: "I deem it necessary to discuss and determine only the question of estoppel raised in this case, for if the complainant is estopped to now set up title in itself to the lands in controversy, the other questions become unimportant. That the State, as well as individuals, may be estopped by its acts, conduct, silence, and acquiescence, is established by a line of well adjudicated cases."

On page 35, the Court says: "The lands now involved were not patented. The Swamp Land Act did not identify the land granted. Assuming that the original surveys, which in many cases were undoubtedly fraudulent, rather than the re-surveys, should govern under the arrangement made between the two governments, the record in this case shows that the field notes of these surveys were contained in several hundred small pass books, turned over to the State Land Office by the Surveyor-General. The complainant, therefore, had in its possession the evidences of its title. It is urged by counsel for the State that none of its officers or agents examined or knew of the contents of these field notes, and that this constitutes a legal excuse for not applying to it the doctrine of estoppel. The State, therefore, seeks to apply the doctrine of estoppel to the railroad company and its grantees, but denies that it is applicable to itself. What reason can be found for such a position? Let us apply the case to individuals. Should A, assuming to own large tracts of land, convey certain of them to B, in trust to be conveyed to C, upon the payment of a valuable consideration, which, when paid, will inure to the benefit of B as well as of C; the consideration is paid; the land conveyed; B, under the power he possesses, imposes annual burdens upon these lands for fifteen years, which C pays; B sleeps for 28 years upon his rights in ignorance that the title at the time of the conveyance to C was in him, and C has meanwhile openly and notoriously asserted his title and dealt with the lands as his own, has mortgaged, sold, and conveyed them, and all this while the evidence of title is in the possession of B; would not B be estopped to assert his title? It is said in *U. S. vs. Military Road Co., 41 Federal Reporter, 493:* 'Whatever is inequitable as between man and man in their dealings with each other should also be deemed inequitable as berween the United States and those with whom they condescend to deal under like circumstances.' Applying the principles of the above cases and others that might be cited to the present case, I can find no escape from the conclusion that the claim of the complainant has become "stale," and that it is now estopped to assert title in itself. The claim of the State has no foundation in equity, justice or good conscienee. The maxim that 'where one of two parties, neither of whom has acted dishonestly, must suffer, he shall suffer who, by his own act, has occasioned the confidence and consequent injury of the other,' applies to the present case, in which Mr. Sleeper, the Deputy Commissioner of the State Land Office, testifies that it required the labor of three years to examine the records in that office and colate the evidence upon which he now bases the claim of the State. The decree of the Court below must be reversed and the bill dismissed, with costs of both Courts."

BRIEF.

On the facts disclosed by the record, as stated above, the sole question passed upon by the Supreme Court of Michigan was the question of estoppel. That is not a Federal question, and therefore there is no jurisdiction in the Supreme Court of the United States to review the decision of the Supreme Court of the State.

This case is so exactly in line with a case decided in the Supreme Court of the United States November 3rd, 1884, *Adams County vs. Burlington & Missouri Railway Company, 112 U. S. Reports, 123*, that I do not think it necessary to do more than cite the ruling in that case, where the State Court of Iowa held estoppel good against the county in a swamp land case. That case seemed to have been very thoroughly discussed, and on motion to dismiss in this Court for want of jurisdiction, this Court held that there were two questions presented by the pleadings, one whether the county acquired title under the swamp land law, and. second, whether it was estopped by its subsequent acts from setting up that title against the railroad company, and says: "It may be conceded that the first of these questions was Federal in its character, but we are clearly of opinion that the second was not. A consideration of no Act of Congress was involved in its decision. There was nothing in the swamp land grant to prevent the county from surrendering the property to the railroad company if that was thought best. Under this defense the validity of the original title was not disputed. The claim was that, in legal effect that title had been ceded to the railroad company, and that the county was in no condition to demand it back."

Again the Court says: "The record discloses that this separate and distinct defense was made, and that it in no way depended on the validity or invalidity of the original title of the county. In our opinion it is clearly to be inferred from the decree of the Court of original jurisdiction, which was affirmed in the Supreme Court, that the decision in favor of the company was placed entirely on that ground."

It is also held in the same case that it is competent for the Supreme Court of the United States to look into the opinion of the judges of the State Court to see upon what grounds the decision rested.

I refer also to the case of *Miller et al. vs. Anderson et al., Supreme Court of the United States, decided November 6th, 1893, reported in 14 Supreme Court Reporter, page 52*, and cases cited; also the case of *Eustis et al. vs. Bowles et al., U. S. Supreme Court, Nov. 20th, 1893, 14 Supreme Court Reporter, 131.*

W. L. WEBBER,
Attorney for Defendants and Appellees.

Office Supreme Court, U. S.
FILED
JAN 29 1894
JAMES H. McKENNEY,
CLERK

CASE No. 15,289.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM No. 913.

THE STATE OF MICHIGAN, EX REL THE ATTORNEY GENERAL, PLAINTIFF IN ERROR,

vs.

THE FLINT & PERE MARQUETTE RAILROAD COMPANY, WILLIAM W. CRAPO, TRUSTEE, AND ALFRED W. NEWTON, DEFENDANTS IN ERROR.

BRIEF FOR PLAINTIFF IN ERROR ON RESISTING MOTION TO DISMISS THE WRIT OF ERROR.

A. A. ELLIS, *Attorney General,*
Attorney for Plaintiffs in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1893. No. 913.

THE STATE OF MICHIGAN,
ex rel, The Attorney General,
Plaintiff in Error,

vs.

THE FLINT & PERE MARQUETTE RAILROAD COMPANY,
WILLIAM W. CRAPO, Trustee, and
ALFRED W. NEWTON,
Defendants in Error.

BRIEF FOR PLAINTIFF IN ERROR.

The record discloses in this case that the federal question was presented to the Supreme Court of the State of Michigan, and the plaintiff in error contends that although the opinion does not state in so many words that a federal question was passed upon, it does appear from the record, as we contend, that a federal question was necessarily involved, and hence, this case comes within the exception of Adams County vs. Burlington & Missouri Railway Company, 112 U. S. Reports, 123.

In the above case it is held that "it must appear affirmatively not only that a federal question was raised and presented for decision to the highest Court of the State having jurisdiction, but that it was decided, or that its decision was necessary to the judgment that was rendered."

We contend that the decision of the federal question was necessary even to reach the conclusion which was reached in this case, and we therefore ask that the motion be denied.

A. A. ELLIS,
Attorney General.

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